



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 7] नई दिल्ली, फरवरी 12—फरवरी 18, 2017, शनिवार/ माघ 23—माघ 29, 1938
No. 7] NEW DELHI, FEBRUARY 12—FEBRUARY 18, 2017, SATURDAY/MAGHA 23—MAGHA 29, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 फरवरी, 2017

का.आ. 298.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा सरकार, गृह विभाग, चंडीगढ़ के दिनांक 03.11.2016 के आदेश सं. 20/03/2012-3 एचजीआई (I) द्वारा दी गई सहमति से एतद्वारा वर्ष, 2016 फरवरी में राज्य भर में हुए हिंसक आरक्षण आंदोलन के दौरान चुल्लैयाना मोड़, रोहतक पर हरि भूमि प्रेस को आग लगाने और लूटमार से संबंधित भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 148, 149, 188, 285, 395, 427, 436, 452, 506 और धारा 25/54/59 [अर्थात् सशस्त्र अधिनियम, 1959 की धारा 25 (1959 का अधिनियम सं. 54)] और सार्वजनिक संपत्ति नुकसानी निवारण अधिनियम, 1984 की धारा 3 के अंतर्गत दिनांक 25.02.2016 को पुलिस थाना सांपला, जिला रोहतक में पंजीकृत एफआईआर सं. 84 की जांच और ऊपर उल्लिखित अपराधों से संबंधित प्रयास, दुष्प्रेरण तथा षडयंत्र के मामले के अन्वेषण के संबंध में और इसी दौरान किए गए किन्हीं अन्य अपराधों अथवा इसी तरह के तथ्यों से उद्भूत अपराधों के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद्वारा संपूर्ण हरियाणा राज्य पर करती है।

[फा. सं. 228/57/2016-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 6th February, 2017

S.O. 298.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana, Home Department, Chandigarh vide Order No. 20/3/2012-3 HGI (I) dated 03.11.2016, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of FIR No. 84, dated 25.02.2016 under Sections 148, 149, 188, 285, 395, 427, 436, 452, 506 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Sections 25/54/59 [i.e. Section 25 of the Arms Act, 1959 (Act No. 54 of 1959)] and Section 3 of Prevention of Damage to Public Property Act, 1984 registered in Police Station Sampla, District Rohtak pertaining to the offences of arson & loot of Hari Bhomi Press at Chullyana Mor, Rohtak during the State wide violent reservation agitation that took place in February, 2016 and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/57/2016-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 6 फरवरी, 2017

का.आ. 299.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा सरकार, गृह विभाग, चंडीगढ़ के दिनांक 03.11.2016 के आदेश सं. 20/03/2012-3 एचजीआई (II) द्वारा दी गई सहमति से एतद्वारा वर्ष, 2016 फरवरी में राज्य भर में हुए हिंसक आरक्षण आंदोलन के दौरान दिल्ली रोड, रोहतक पर इंडस पब्लिक स्कूल को आग लगाने और लूटमार से संबंधित भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 148, 149, 188, 285, 395, 427, 436, 452, 506 के अंतर्गत दिनांक 26.02.2016 को पुलिस थाना अर्बन एस्टेट में पंजीकृत एफआईआर सं. 102 की जांच और ऊपर उल्लिखित अपराधों से संबंधित प्रयास, दुष्प्रेरण तथा षडयंत्र के मामले के अन्वेषण के संबंध में और इसी दौरान किए गए किन्हीं अन्य अपराधों अथवा इसी तरह के तथ्यों से उद्भूत अपराधों के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद्वारा संपूर्ण हरियाणा राज्य पर करती है।

[फा. सं. 228/57/2016-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 299.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana, Home Department, Chandigarh vide Order No. 20/3/2012-3 HGI (II) dated 03.11.2016, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of FIR No. 102, dated 26.02.2016 under Sections 148, 149, 188, 285, 395, 427, 436, 452, 506 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered in Police Station Urban Estate pertaining to the offences of arson & loot in Indus Public School at Delhi Road Rohtak during the State wide violent reservation agitation that took place in February, 2016 and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/57/2016-AVD-II]

S. P. R. TRIPATHI, Under Secy.

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 30 जनवरी, 2017

का.आ. 300.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों के स्थान पर कालम (3) में विनिर्दिष्ट व्यक्तियों को तत्काल प्रभाव से और अगले आदेशों तक, उक्त सारणी के कालम (1) में विनिर्दिष्ट बैंकों में निदेशक के पद पर नामित करती है:-

क्रम सं.	बैंक का नाम	वर्तमान निदेशक का नाम	प्रस्तावित व्यक्ति का नाम
	1.	2.	3.
1.	स्टेट बैंक आफ त्रावणकोर	डॉ. जे. सदाकदुल्ला	डॉ. जे. सदाकदुल्ला, भूतपूर्व क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, बी-4, रिजर्व बैंक स्टाफ क्वार्टर्स, पीएच रोड, किलपौक, चेन्नई-600010
2.	स्टेट बैंक आफ मैसूर	श्री मुरली राधाकृष्णन	श्री मुरली राधाकृष्णन, भूतपूर्व क्षेत्रीय निदेशक, आरबीआई, 111, वसंत विहार, 85, नेपियन सी रोड, मुम्बई-400006

[फा.सं. 6/3/2011-बीओ-1]

ज्ञानतोष राय, अवसर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 30th January, 2017

S.O. 300.—In exercise of the powers conferred by clause (b) of the sub-section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominate the person specified in column (3) of the table below as Director of Banks specified in column (1) thereof in place of the person specified in column (2) of said Table, with immediate effect and until further orders:-

Sl. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	1	2	3
1.	State Bank of Travancore	Dr. J. Sadakkadulla	Dr. J. Sadakkadulla, Former Regional Director, Reserve Bank of India B 4, Reserve Bank Staff Quarters, PH Road, Kilpauk, Chennai-600 010.
2.	State Bank of Mysore	Shri Murli Radhakrishnan	Shri Murli Radhakrishnan, Former Regional Director, RBI, 111, Vasant Vihar, 85, Napean Sea Road, Mumbai-400 006.

[F. No. 6/3/2011-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 301.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. प्रसन्न कुमार मोहन्ती को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की

अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, डॉ. एस. रामचन्द्र के स्थान पर भारतीय रिजर्व बैंक के दक्षिणी स्थानीय बोर्ड में अंशकालिक गैर-सरकारी सदस्य नियुक्त करती है।

[फा.सं. 1/2/2016-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 301.—In exercise of the powers conferred by sub-section (1) of section 9 of the Reserve Bank of India Act, 1934 (2 of 1934), The Central Government hereby appoints Dr. Prasanna Kumar Mohanty as part-time non official Member on the Southern Local Board of Reserve Bank of India, for a period of four years from the date of notification of his appointment or until further orders, whichever is earlier vice Dr. S. Ramachander.

[F.No.1/2/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 302.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री वल्लभ रूपचंद भंशाली को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, प्रो. महेन्द्र सिंह सोधा के स्थान पर भारतीय रिजर्व बैंक के पश्चिमी स्थानीय बोर्ड में अंशकालिक गैर-सरकारी सदस्य नियुक्त करती है।

[फा.सं. 1/6/2016-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 302.—In exercise of the powers conferred by sub-section (1) of section 9 of the Reserve Bank of India Act, 1934 (2 of 1934), The Central Government hereby appoints Shri Vallabh Roopchand Bhanshali as part-time non official Member on the Western Local Board of Reserve Bank of India, for a period of four years from the date of notification of his appointment or until further orders, whichever is earlier vice Prof. Mahendra Singh Sodha.

[F.No. 1/6/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 303.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 8 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री राजीव कुमार (जन्म तिथि: 06.07.1951) को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में अंशकालिक गैर-सरकारी निदेशक नामित करती है।

[फा.सं. 1/10/2016-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 303.—In exercise of the powers conferred by clause (c) of the sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri Rajiv Kumar (DOB: 06.07.1951) as Part Time Non Official Director on the Central Board of Reserve Bank of India for a period of four years from the date of notification of his appointment, or until further orders, whichever is earlier.

[F.No. 1/10/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 304.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री सुनील मित्रा को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, श्री पी. डी. चितलांगिया के स्थान पर भारतीय रिजर्व बैंक के पूर्वी स्थानीय बोर्ड में अंशकालिक गैर-सरकारी सदस्य नियुक्त करती है।

[फा.सं. 1/11/2016-वीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 304.—In exercise of the powers conferred by sub-section (1) of section 9 of the Reserve Bank of India Act, 1934 (2 of 1934), The Central Government hereby appoints Shri Sunil Mitra as part-time non official Member on the Eastern Local Board of Reserve Bank of India, for a period of four years from the date of notification of his appointment or until further orders, whichever is earlier vice Shri P.D. Chitlangia.

[F.No. 1/11/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 305.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 8 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अशोक गुलाटी (जन्म तिथि: 11.05.1954) को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में अंशकालिक गैर-सरकारी निदेशक नामित करती है। उनकी नियुक्ति इस शर्त के अध्वधीन होगी कि वे भारतीय रिजर्व बैंक के बोर्ड में शामिल होने से पहले आईडीएफसी बैंक लि. के बोर्ड से त्याग-पत्र देंगे।

[फा.सं. 1/15/2016-वीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 305.—In exercise of the powers conferred by clause (c) of the sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri Ashok Gulati (DOB: 11.05.1954) as Part Time Non Official Director on the Central Board of Reserve Bank of India for a period of four years from the date of notification of his appointment, or until further orders, whichever is earlier subject to the condition that he will resign from the Board of IDFC Bank Ltd. before joining the Board of Reserve Bank of India.

[F.No. 1/15/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 306.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 8 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री मनीष सभरवाल (जन्म तिथि: 29.12.1969) को उनकी नियुक्ति की अधिसूचना की तारीख से चार वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में अंशकालिक गैर-सरकारी निदेशक नामित करती है।

[फा.सं. 1/16/2016-वीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 306.—In exercise of the powers conferred by clause (c) of the sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri Manish Sabharwal (DOB: 29.12.1969) as Part Time Non Official Director on the Central Board of Reserve Bank of India for a period of four years from the date of notification of his appointment, or until further orders, whichever is earlier.

[F.No. 1/16/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 16 फरवरी, 2017

का.आ. 307.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री हेमन्त भार्गव, प्रबंध निदेशक (एमडी), भारतीय जीवन बीमा निगम (एलआईसी) को 10 फरवरी, 2017 के अपराह्न से उनकी अधिवर्षिता की तारीख (31.07.2019) तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम का सदस्य नियुक्त करती है।

[फा.सं. ए-15011/01/2014-बीमा-I]

एस. के. मोहन्ती, अवर सचिव

New Delhi, the 16th February, 2017

S.O. 307.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Hemant Bhargava, Managing Director (MD), Life Insurance Corporation of India (LIC) as a Member of the said Corporation with effect from the afternoon of 10th February, 2017 up to the date of his superannuation (31.07.2019), or until further orders, whichever is earlier.

[F. No. A-15011/01/2014-Ins.I]

S. K. MOHANTY, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 8 फरवरी, 2017

का.आ. 308.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, जाग्रेब में श्री कुलदीप मलिक, सहायक अनुभाग अधिकारी को दिनांक 8 फरवरी, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/02/2017]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 8th February, 2017

S.O. 308.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Kuldeep Malik, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Zagreb to perform the Consular services with effect from 8th February, 2017.

[No. T-4330/02/2017]

PRAKASH CHAND, Dy. Secy. (Consular)

नागर विमानन मंत्रालय

नई दिल्ली, 3 जनवरी, 2017

का.आ. 309.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 की संख्या 55) की धारा 3, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री इन्द्राकांति नरसिम्हा मूर्ति, कार्यपालक निदेशक, भारतीय विमानपत्तन प्राधिकरण को सदस्य (संचालन), भारतीय विमानपत्तन प्राधिकरण के पद पर अनुसूची 'ए' स्तर के वेतनमान रुपए 75000-100000/- में दिनांक 23 नवम्बर, 2016 के पूर्वार्द्ध से पांच वर्ष की अवधि तक या उनकी सेवानिवृत्ति की तारीख तक, या आगले आदेश तक, जो भी पहले लागू हो, नियुक्त करती है।

[फा. सं. एवी-24011/8/2016-एएआई-एमओसीए]

पी. जे. थॉमस, अवर सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 3rd January, 2017

S.O. 309.—In exercise of the powers conferred by Section 3 of the Airports Authority of India Act, 1994 (No.55 of 1994), the Central Government hereby appoint Shri Indrakanti Narasimha Murthy, Executive Director, AAI as Member (Operations), Airports Authority of India in Schedule 'A' scale of pay of Rs.75000-100000/- with effect from forenoon of 23rd November, 2016 for a period of five years or till the date of his superannuation or until further orders, whichever is the earliest.

[F. No. AV-24011/8/2016-AAI-MOCA]

P. J. THOMAS, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 14 फरवरी, 2017

का.आ. 310.—केन्द्रीय सरकार को यह प्रतीत होता है कि इसके उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त होने की संभावना है;

और उक्त अनुसूची में वर्णित भूमि के क्षेत्र में अंतर्विष्ट करने वाला रेखांक संख्यांक आर.ई.वी./15/16, तारीख 14 दिसम्बर, 2016 का निरीक्षण सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, राँची – 834029 (झारखण्ड) के कार्यालय में या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, मगध और आसमाली क्षेत्र, जिला चतरा और लातेहार (झारखंड) के कार्यालय में या उपायुक्त, जिला चतरा और लातेहार, झारखण्ड या महाप्रबंधक (खोज प्रभाग), आर.आई.-III, केन्द्रीय खान योजना और डिजाइन संस्थान लिमिटेड, गोंडवाना पैलेस, कांके रोड, राँची (झारखंड) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता- 700001 के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वोक्षण करने के अपने आशय की नोटिस देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति –

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा; या
- (ii) उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई कार्रवाई से हुई क्षति या संभावित क्षति अधिनियम की धारा 6 के अधीन किसी नुकसानी के लिए प्रतिकर का दावा कर सकेगा; या
- (iii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन समाप्त हो गई पूर्वोक्षण अनुज्ञप्तियों के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गये खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और

उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए उक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को सुपुर्द करेगा,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, मगध और आम्नापाली क्षेत्र, जिला चतरा और लातेहार (झारखंड) या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, दरभंगा हाउस, राँची - 834029 (झारखण्ड) को सुपुर्द करेगा ।

अनुसूची

संघमित्रा विवृत परियोजना

जिला चतरा और लातेहार (झारखंड)

(रेखांक संख्यांक आरईवी /15/16, तारीख 14 दिसम्बर, 2016)

ब्लॉक-क							
क्रम सं.	ग्राम	थाना संख्या	थाना	जिला	क्षेत्र		टिप्पणियाँ
					एकड़ में	हेक्टेयर में	
1.	मनातु	50	बालुमाथ	लातेहार	14.00	5.665	भाग
2.	बनवार	57	बालुमाथ	लातेहार	298.87	120.951	भाग
3.	बनालात	49	बालुमाथ	लातेहार	131.98	53.411	भाग
4.	चरा	54	बालुमाथ	लातेहार	95.03	38.458	भाग
5.	कुरलोंगा	26	टंडवा	चतरा	329.96	133.532	भाग
कुल:					869.84	352.017	
ब्लॉक-ख							
6.	कुंडी	27	टंडवा	चतरा	49.30	19.951	भाग
7.	सराधु	29	टंडवा	चतरा	120.55	48.786	भाग
कुल:					169.85	68.737	
ब्लॉक-ग							
8	सराधु	29	टंडवा	चतरा	321.73	130.202	भाग
कुल:					321.73	130.202	
ब्लॉक-घ							
9.	कुरलोंगा	26	टंडवा	चतरा	5.35	2.165	भाग
10.	सराधु	29	टंडवा	चतरा	98.95	40.045	भाग
11.	हेचबलिया	30	टंडवा	चतरा	41.99	16.993	भाग
कुल:					146.29	59.203	
ब्लॉक-ड.							
12.	होनहे	50	टंडवा	चतरा	49.95	20.214	भाग
कुल:					49.95	20.214	
ब्लॉक: क + ख + ग + घ + ड. :					1557.66 एकड़ (लगभग)	630.373 हेक्टेयर (लगभग)	

सीमा वर्णन:**ब्लॉक-क**

- क-ख-ग रेखा, बिन्दु 'क' से आरंभ होती है और ग्राम मनातु, बनवार, चारा से गुजरती है और बिन्दु 'ग' पर मिलती है।
 ग-घ-ड.-च-क रेखा, बिन्दु ग्राम चारा, बनालात, कुरलौंगा, मनातु के भाग से आरंभिक बिन्दु 'क' पर मिलती है।

ब्लॉक -ख

- छ-ज-झ-छ रेखा, बिन्दु 'छ' से आरंभ होती है और ग्राम कुरलौंगा, कुंडी, सराधु भाग से गुजरती है और आरंभिक बिन्दु 'छ' पर मिलती है।

ब्लॉक-ग

- ज -ट-ठ रेखा, बिन्दु 'ज' से आरंभ होती है और ग्राम सराधु के भाग से गुजरती हुई और बिन्दु 'ठ' पर मिलती है।
 ठ-ड-ज रेखा, ग्राम सराधु के भाग से गुजरती हुई और बिन्दु 'ज' पर मिलती है।

ब्लॉक- घ

- ढ-ण-त रेखा, बिन्दु 'ढ' से आरंभ होती है और ग्राम कुरलौंगा सराधु के भाग से गुजरती हुई और बिन्दु 'त' पर मिलती है।
 त-थ-ढ रेखा, बिन्दु ग्राम सराधु हेचाबलिया के भाग से और दुमुहानी रेखा से गुजरती हुई ग्राम कोयेद बरकुहे, कुरलौंगा के भाग से होकर और आरंभिक बिन्दु 'ढ' पर मिलती है।

ब्लॉक-ड.

- द-ध-न रेखा, बिन्दु 'द' से आरंभ होती है और ग्राम नौडिहा, कोयेद, होन्हे से गुजरती हुई और आरंभिक बिन्दु 'द' पर मिलती है।

[फा.सं. 43015/3/2017-एलए एण्ड आईआर]

सुजीत कुमार, अवर सचिव

MINISTRY OF COAL

New Delhi, the 14th February, 2017

S.O. 310.—Whereas, it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And, whereas, the plan bearing number Rev/15/16, dated the 14th December, 2016 containing details of the areas of land described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi- 834029 (Jharkhand) or at the office of the General Manager, Central Coalfields Limited, Magadh and Amrapali Area, District -Chatra and Latehar (Jharkhand), Deputy Commissioner, District- Chatra and Latehar, Jharkhand or at the office of the General Manager (Exploration Division), RI- III, Central Mine Planning and Design Institute Limited, Gondwana Palace, Kanke Road, Ranchi (Jharkhand) or at the office of the Coal Controller, 1, Council House Street, Kolkata- 700 001;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in land described in the aforesaid Schedule.

Any person interested in the land described in the above mentioned Schedule may —

- (i) object to the acquisition of the whole or any part of the land or of any rights in or over the said land; or
- (ii) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 thereof ; or
- (iii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the office of the General Manager, Central Coalfields Limited, Magadh and Amrapali Area, District Chatra and Latehar (Jharkhand) or General Manager, Central Coalfields Limited, Land and Revenue Department, Darbhanga House, Ranchi- 834029 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE**Sanghmitra Opencast Project****District- Chatra and Latehar, Jharkhand**(Plan bearing number REV/15/16, dated the 14th December, 2016)

Block- A							
SL. Number	Village	Thana number	Thana	District	Area		Remarks
					In acres	In hectares	
1.	Manatu	50	Balumath	Latehar	14.00	5.665	Part
2.	Banwar	57	Balumath	Latehar	298.87	120.951	Part
3.	Banalat	49	Balumath	Latehar	131.98	53.411	Part
4.	Charra	54	Balumath	Latehar	95.03	38.458	Part
5.	Kurlounga	26	Tandwa	Chatra	329.96	133.532	Part
Total:					869.84	352.017	
Block-B							
6.	Kundi	27	Tandwa	Chatra	49.30	19.951	Part
7.	Saradhu	29	Tandwa	Chatra	120.55	48.786	Part
Total:					169.85	68.737	
Block-C							
8.	Saradhu	29	Tandwa	Chatra	321.73	130.202	Part
Total:					321.73	130.202	
Block-D							
9.	Kurlonga	26	Tandwa	Chatra	5.35	2.165	Part
10.	Saradhu	29	Tandwa	Chatra	98.95	40.045	Part
11.	Heckbalia	30	Tandwa	Chatra	41.99	16.993	Part
Total:					146.29	59.203	
Block-E							
12.	Honhe	50	Tandwa	Chatra	49.95	20.214	Part
Total:					49.95	20.214	
Block : A+B+C+D+E :					1557.66 acres (approximately)	630.373 hectares (approximately)	

Boundary Description :**Block- A**

- A-B-C - Line starts from point 'A' passes through part village of Manatu, Banwar, Chara and meets at point 'C'.
- C-D-E-F-A - Line passes through part village of Charra, Banalat, Kurlounga, Manatu and meets at starting point 'A'.

Block- B

- G-H-I-G - Line starts from point 'G' passes through part village of Kurlounga , Kundi Saradhu, Kurlaunga and meets at starting point 'G'.

Block –C

- J-K-L - Line starts from point 'J' passes through part village of Saradhu and meets at starting point 'L'.
- L-M-J - Line passes through part village of Saradhu and meets at point 'J'.

Block-D

- N-O-P - Line starts from point 'N' passes through part village of Kurlounga, Saradhu and meets at point 'P'.
- P-Q-N - Line passes through part village of Saradhu Hechabalia, Centre line of Domuhani Nadi and part village of Koed Bar kute , Kurlounga and meets at starting point 'N'.

Block –E

- R-S-T - Line start from point 'R' passes through part village of Naudiha, Koed, Honhe, and meets at starting point 'R'.

[F.No. 43015/3/2017-LA&IR]

SUJEET KUMAR, Under Secy.

नई दिल्ली, 14 फरवरी, 2017

का.आ. 311.—केन्द्रीय सरकार को यह प्रतीत होता है कि इसके उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त होने की संभावना है;

और उक्त अनुसूची में वर्णित भूमि के क्षेत्र में अंतर्विष्ट करने वाला रेखांक संख्यांक आर.ई.वी./13/2016, तारीख 3 दिसम्बर, 2016 का निरीक्षण सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, राँची – 834029 (झारखण्ड) के कार्यालय में या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, अरगडा क्षेत्र, जिला हजारीबाग (झारखंड) के कार्यालय में या उपायुक्त, जिला हजारीबाग (झारखण्ड) के कार्यालय में या महाप्रबंधक (खोज प्रभाग), आर.आई.-III, केन्द्रीय खान योजना और डिजाइन संस्थान लिमिटेड, गोंडवाना पैलेस, कांके रोड, राँची (झारखंड) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता- 700001 के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वोक्त करने के अपने आशय की सूचना देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति –

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा; और

- (ii) उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई कार्रवाई से हुई क्षति या संभावित क्षति अधिनियम की धारा 6 के अधीन किसी नुकसानी के लिए प्रतिकर का दावा कर सकेगा; और
- (iii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन समाप्त हो गई पूर्वोक्त अनुज्ञप्तियों के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गये खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए उक्त भूमि से संबंधित सभी मानचित्रों, सारणियों और अन्य दस्तावेजों को सुपुर्द करेगा,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, अरगडा क्षेत्र, जिला हजारीबाग (झारखंड) या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, (भूमि और राजस्व विभाग), दरभंगा हाउस, राँची - 834029 (झारखण्ड) को सुपुर्द करेगा ।

अनुसूची

चानो रिकवा विवृत परियोजना

जिला हजारीबाग, झारखंड

(रेखांक संख्यांक आरईवी /13/2016, तारीख 3 दिसम्बर, 2016)

क्र.सं.	ग्राम	थाना	थाना संख्या	जिला	क्षेत्र (एकड़ में)	क्षेत्र (हेक्टेयर में)	टिप्पणियां
1.	खपिया	मांडू	29	हजारीबाग	615.32	249.02	भाग
2.	कुरा	मांडू	30	हजारीबाग	628.24	254.24	भाग
3.	रिकवा	मांडू	31	हजारीबाग	433.85	175.58	भाग
4.	कनकी	मांडू	47	हजारीबाग	50.19	20.31	भाग
कुल:					1727.60 एकड़ (लगभग)	699.15 हेक्टेयर (लगभग)	

सीमा - वर्णन:

- क-ख-ग-घ रेखा, बिन्दु 'क' से आरंभ होती है और ग्राम कुरा, रिकवा, खपिया तथा कनकी के भाग से गुजरते हुए और बिन्दु 'घ' पर मिलती है ।
- घ-ड.-च रेखा, ग्राम कनकी तथा खपिया के भाग से गुजरते हुए और बिन्दु 'च' पर मिलती है ।
- च-छ-ज-झ रेखा, ग्राम खपिया कुरा तथा रिकवा के भाग से गुजरते हुए और बिन्दु 'झ' पर मिलती है ।
- झ- क रेखा, ग्राम खपिया तथा कुरा के भाग से गुजरते हुए और प्रारंभिक बिन्दु 'क' पर मिलती है ।

[फा.सं. 43015/4/2017-एलए एण्ड आईआर]

सुजीत कुमार, अवर सचिव

New Delhi, the 14th February, 2017

S.O. 311.—Whereas, it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And, whereas, the plan bearing number Rev/13/2016, dated the 3rd December, 2016 containing details of the areas of land described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi- 834029 (Jharkhand) or at the office of the General Manager, Central

Coalfields Limited, Argada Area, District Hazaribagh (Jharkhand), or Deputy commissioner, District Hazaribagh, (Jharkhand), or at the office of the General Manager (Exploration Division), RI- III, Central Mine Planning and Design Institute Limited, Gondwana Palace, Kanke Road, Ranchi (Jharkhand) or at the office of the Coal Controller, 1, Council House Street, Kolkata- 700 001;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development), Act, 1957 (20 of 1957), hereinafter referred to as the said Act, the Central Government hereby gives notice of its intention to prospect for coal in land described in the said Schedule.

Any person interested in the land described in the above mentioned Schedule may —

- (i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land; or
- (ii) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act; or
- (iii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the office of the General Manager, Central Coalfields Limited, Argada Area, District Hazaribagh (Jharkhand) or General Manager, Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi - 834029 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Chano Rikba Opencast Project

District – Hazaribagh, Jharkhand

(Plan bearing number Rev/13/2016, dated the 3rd December, 2016)

Sl. No.	Village	Thana	Thana number	District	Area (In acres)	Area (in hectares)	Remarks
1.	Khapia	Mandu	29	Hazaribagh	615.32	249.02	Part
2.	Kura	Mandu	30	Hazaribagh	628.24	254.24	Part
3.	Rikba	Mandu	31	Hazaribagh	433.85	175.58	Part
4.	Kanki	Mandu	47	Hazaribagh	50.19	20.31	Part
Total:					1727.60 acres (approximately)	699.15 hectares (approximately)	

Boundary Description:

- A-B-C-D - Line starts from point 'A' passes through part of the village Kura, Rikba, Khapia and Kanki and meets at point 'D'.
- D-E-F - Line passes through part of village Kanki, Khapia and meets at point 'F'.
- F-G-H-I - Line passes through part of village Khapia, Kura, Rikba and meets at point 'I'.
- I-A - Line passes through part of village Khapia, Kura and meets at starting point 'A'.

[F.No. 43015/4/2017-LA&IR]

SUJEET KUMAR, Under Secy.

संचार मंत्रालय

(दूरसंचार विभाग)

नई दिल्ली, 8 फरवरी, 2017

का.आ. 312.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 (यथा संशोधित, 1987, 2007 तथा 2011) के नियम 10 (4) के अनुसरण में, महानगर टेलिफोन निगम लिमिटेड, मुंबई, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है :-

2. यह अधिसूचना भारत के राजपत्र में प्रकाशन की तारीख से लागू होगी

[सं. ई-11016/01//2016- राजभाषा]

सुधेश कुमार शाही, उप महानिदेशक (समन्वय एवं प्रशासन)

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

New Delhi, the 8th February, 2017

S.O. 312.—In pursuance of Rule 10(4) of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the Mahanagar Telephone Nigam Limited, Mumbai, where more than 80% of staff have acquired the working knowledge of Hindi :

2. This notification shall come into force from the date of its publication in the Official Gazette of India.

[No. E-11016/01/2016-O.L.]

S. K. SHAHI, Dy. Director General (C&A)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 6 फरवरी, 2017

का.आ. 313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 03/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-17012/65/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th February, 2017

S.O. 313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2008) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 30.01.2017.

[No. L-17012/65/2007-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 10th January, 2017

Reference: (CGITA) No. 03/2008

The Sr. Divisional Manager,
LIC of India,
Divisional Office,
Jeevan Prakash, Tilak Road,
Ahmedabad (Gujarat)

...First Party

V/s

Shri Rajesh K. Datania,
C/o Lsuryoday Labour Union,
Opp. Rangila Chowky, Shahpur,
Ahmedabad(Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/65/2007-IR(M) dated 04.01.2008 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the termination of Sh. Rajesh K. Datania w.e.f. 05.05.2006 without paying termination benefit is just and legal? If not, what relief the workman is entitled to?”

1. The reference dates back to 04.01.2008. Both the parties were served vide notice Ex. 2 to appear on 28.05.2008. Acknowledgements of the notices Ex. 3 and 4 were received. The second party submitted the statement of claim Ex. 5 on 26.11.2009 and the first party submitted the written statement Ex. 8 on 05.08.2010. Since then the second party has been absent to lead evidence, therefore, on 04.03.2011, fresh notice was issued to both the parties to appear on 19.05.2011 but to no result.
2. Thus it appears that the second party workman is not willing to prosecute the case.
3. Therefore, the reference is disposed of with the observation as under: “the termination of Sh. Rajesh K. Datania w.e.f. 05.05.2006 without paying termination benefit is just and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 38/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/3/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2010) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/3/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 9th January, 2017

Reference: (CGITA) No. 38/2010

1. The Asset Manager,
ONGC Ltd., Ankleshwar Asset,
Ankleshwar (Gujarat)
2. M/s Nirmal Construction,
17, Vaishali Society,
Ankleshwar (Gujarat)

...First Party

V/s

Shri/Smt. Bahttuben Balmik Bagh,
At. Chauta Bazar, Bhatwad,
Ankleshwar,
Bharuch (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri/Smt. C.B. Godigajbar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/3/2009-IR(M) dated 02.02.2010 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of M/s Nirmal Construction, Ankleshwar, Contractor of ONGC Ltd., Ankleshwar in terminating the services of Smt. Bahttuben Balmik Bagaw.e.f. 02.03.2009 is legal, proper and just? To what relief the concerned workman is entitled?”

1. The reference dates back to 02.02.2010. The second party submitted the vakalatpatra Ex. 4 and statement of claim Ex. 5 on 06.07.2010 along with list of documents Ex. 9 in the Industrial Tribunal, Ahmedabad but no document was annexed with the list. On transfer of the reference to this tribunal on 05.10.2011, the second party submitted the affidavit on 24.11.2011 in pursuance to the notice issued to the party to appear.

1. Shri K.V. Gadhia Associates submitted the vakalatpra Ex. 10 on 03.12.2013 and written statement Ex. 11 on 24.04.2014 in this tribunal. Since then the second party has not been appearing to lead evidence. Thus it appears that the second party is not willing to prosecute the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence with the observation as under: “the action of the management of M/s Nirmal Construction, Ankleshwar, Contractor of ONGC Ltd., Ankleshwar in terminating the services of Smt. Bahttuben Balmik Bagaw.e.f. 02.03.2009 is legal, proper and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 48/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-11011/5/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2010) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport Authority of India and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-11011/5/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 9th January, 2017

Reference: (CGITA) No. 48/2010

1. The Airport Director,
Airport Authority of India,
S.V. Patel International Airport,
Ahmedabad (Gujarat) – 380003
2. The Regional Manager,
M/s Akbar Travels of India,
101, Crystal Arcade, Opp. Telephone Exchange Office,
C.G. Road, Ahmedabad (Gujarat)
3. M/s Akbar Travels of India Car Rental Service,
101, Crystal Arcade, Opp. Telephone Exchange Office,
C.G. Road, Ahmedabad (Gujarat)
4. M/s Benzy Enterprises,
101, Crystal Arcade, Opp. Telephone Exchange Office,
C.G. Road, Ahmedabad (Gujarat)
5. M/s Geoman,
Room No. 4, Ramji Mandir, Hasol, Sardarnagar,
Ahmedabad (Gujarat)

...First Party

V/s

The General Secretary,
Gujarat Kamdar Mandal, 402/403,
Shilp II, Nr. Sales India, Income Tax, Ashram Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party No. 3 & 4 : Shri P.M. Thakkar Associates

For the First Party No. : Shri D.C. Gandhi Associates
 For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11011/5/2009-IR(M) dated 18.03.2010 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Gujarat Kamdar Mandal Union for reinstatement of 58 Taxi Drivers w.e.f. 08.07.2008 (as per list enclosed) whose services have been terminated by M/s Akbar Travels of (I) Ltd., M/s Akbar Travels of India Car Rental Service and its sister concern, M/s Benzy Enterprises and M/s Geoman is valid, reasonable and just? If so, what relief the workmen are entitled to and from which date?”

1. The reference dates back to 18.03.2010. Both the parties submitted their vakalatpatra Ex. 6 and 7 on 27.07.2010 and 01.10.2010 respectively. Since then the second party has not submitted the statement of claim despite giving dozen of opportunities and also last opportunity on 17.10.2010. Thus it appears that the second party is not willing to prosecute the case.
2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence with the observation as under: “the demand of Gujarat Kamdar Mandal Union for reinstatement of 58 Taxi Drivers w.e.f. 08.07.2008 (as per list enclosed) whose services have been terminated by M/s Akbar Travels of (I) Ltd., M/s Akbar Travels of India Car Rental Service and its sister concern, M/s Benzy Enterprises and M/s Geoman is not legal, reasonable and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 75/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30011/26/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2012) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30011/26/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
 Presiding Officer, CGIT-cum-Labour Court,
 Ahmedabad,
 Dated 2nd January, 2017

Reference: (CGITA) No. 75/2012

1. The Asset Manager,
 ONGC Ltd., Ankleshwar Asset,
 Ankleshwar

2. M/s Tops Security Ltd.,
C-I, Hariome Shopping Centre,
Nr. Jubili Guest House,
Over Old National Highway,
Ankleshwar

...First Party

V/s

The General Secretary,
Gujarat Mazdoor Sabha,
104, Maharanapratap Complex,
Nr. V.S. Hospital, Ellisbridge,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/26/2011-IR(M) dated 18.04.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Gujarat Mazdoor Sabha that Shri Rajesh Kumar Ram Bahadur Yadav & 63 others (List enclosed) were engaged by the management of ONGC Limited, Ankleshwar through the contractor M/s Tops Security Ltd. in the prohibited category of employment vide notification dated 08.09.1994 is legal and justified? If so, whether the action of the management of ONGC Limited by not giving regularization and equal pay and all other allowances at par with the regular employees of ONGC to Shri Rajesh Kumar Ram Bahadur Yadav & 63 others (List enclosed) are legal and justified? What relief the workmen are entitled to and to what extent?”

1. The reference dates back to 18.04.2012. Some of the workmen detailed below:

- i. Kishan Tiwari
- ii. Munna Nandkishor Chaudhari
- iii. Tausif Gulam Husen Shaikh
- iv. Rishikesh Rai
- v. Ram Shumer Maurya
- vi. Javid gulam Husen Shaikh
- vii. Gulam Husen Yakub Malek
- viii. Magan Bhai Bechar Patel
- ix. Bhautik Kumar Natwar Patel
- x. Malek Anwar Husen
- xi. Nkanaiyalal K. Patel
- xii. Chetan Kumar T. Patel
- xiii. Jayesh Kumar I Patel
- xiv. Sona Pati Thakor
- xv. Yogesh Devajibhai Patel
- xvi. Sanjay Ray Jibhai Patel
- xvii. Jitendra Kumar Sureshbhai Patel
- xviii. Sanjiv Kumar R. Rajput
- xix. Rathod Rajendrasinh J.

- xx. Jignesh Kumar C. Patel
- xxi. Ramanbhai N. Patel
- xxii. Aplesh Bhai A. Vasava
- xxiii. Mistry Hitesh Shantilal
- xxiv. Ranvir Singh P. Rathod
- xxv. Gulam Rasul Yakub Malek
- xxvi. Arif A. Khilji
- xxvii. Sarfaraj I Malek
- xxviii. Deep Prakash Kunwar
- xxix. Nikunj D. Patel
- xxx. Rameshbhai Khushal Patel
- xxxi. Ashok H. Pandey
- xxxii. Ajit K. Solanki
- xxxiii. Arvind C. Parmar
- xxxiv. Shantilal M. Bariya
- xxxv. Dharmendra A. Parmar
- xxxvi. Mahesh B. Padhiyar
- xxxvii. Rathod Mukesh Kumar
- xxxviii. Mahendra Sing Chauhan
- xxxix. Vikram U. Raj
- xl. Kamlesh Kumar Singh

Moved an application Ext. 9 through the General Secretary, ONG Mazdoor Sangh, for withdrawal of their name from the reference as they have settled their disputes with the first party ONGC and M/s Tops Security Ltd.. The copy of the settlement is also filed. Opposite party did not raise any objection, therefore, the application Ext. 9 was allowed and the aforesaid names of the workmen were deleted from the reference as per the settlement. Rest of the 24 workmen despite giving dozen of opportunities, prior to the withdrawal from the reference by the aforesaid workmen on 05.11.2015 and thereafter giving half a dozen opportunities for filing statement of claim, they did not submit the statement of claim. Thus it appears that the rest of the workmen and their Union have no willingness to prosecute the reference. Thus the reference is deserved to be disposed of in the absence of the statement of claim with the observation as under: "the demand of the Gujarat Mazdoor Sabha that rest of the 24 workmen not named in the application and list of withdrawal Ext.9 were engaged by the management of ONGC Limited, Ankleshwar through the contractor M/s Tops Security Ltd. in the prohibited category of employment vide notification dated 08.09.1994 is not legal and justified and the action of the management of ONGC Limited by not giving regularization and equal pay and all other allowances at par with the regular employees of ONGC to rest of the 24 workmen not named in the application and list of withdrawal Ext.9 is legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 207/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30011/32/1999-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 207/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30011/32/1999-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 10th January, 2017

Reference: (CGITA) No. 207/2004

1. The Group General Manager,
ONGC Ltd., Avani Bhawan,
Chandkheda, Ahmedabad (Gujarat)
2. M/s. Industrial Security Services,
Parichay Shopping Centre, Near D Cabin,
Sabarmati, Ahmedabad (Gujarat)
3. M/s. Public Power Mazdoor Kamdar Sahakari Mandli Ltd.,
Opp. Dudhsagar Dairy, Highway Road,
Mehsana (Gujarat)
4. M/s. Lokpriya Labour & Majoor Co-op. Society Ltd.,
308, Karishma Complex, Stadium Circle, C.G. Road,
Ahmedabad (Gujarat)
5. M/s. Chandiodiya Mazdoor Kamdar Sahakari Mandli Ltd.,
179, Ambica Krupa, Ranip, Ahmedabad (Gujarat)
6. Rajdeep Group Mazdoor Kamdar Sahakari Mandli Ltd.,
Vedmata Society, IOC Road, Chandkheda,
Ahmedabad (Gujarat)

...First Party

V/s

The General Secretary,
Gujarat Petroleum Emp. Union,
434/46, Gandhivas, Koba Road, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/32/99-IR(M) dated 11.06.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union for absorption/regularisation of Shri Maganbhai Dhurabhai Parmar and 45 other contract workers, by the management of ONGC Ltd., Ahmedabad is legal and justified? If so, to what relief is the concerned workmen entitled and from which date?”

1. The reference dates back to 11.06.1999. The second party submitted the statement of claim Ex. 10 on 22.12.1999. The first party submitted the written statement Ex. 22 on 17.07.2002.
2. 27 workmen listed in the Ex. 34 out of 46 workmen moved the applications for withdrawal from the reference and also for deleting their names from the reference, which was allowed by the tribunal on 14.05.2015, vide order Ex. 38.
3. The names of the workmen are as under:
 - i. Vyas Jitendra Vishnuprasad
 - ii. Momin Ibrahimabhai Sulemanabhai
 - iii. Patel Sureshkumar Narsinhbhai
 - iv. Chavada Kalidas Amatharam
 - v. Paramr Maganabhai Dhulabhai
 - vi. Parmar Khodabhai Jesangbhai
 - vii. Paramr Kanubhai Somabhai
 - viii. Parmar Pratapbhai Melabhai
 - ix. Solanki Rameshbhai Gotabhai
 - x. Thakor Vishnuji Gandaji
 - xi. Parmar Manojbhai Kantibhai
 - xii. Jadav Chimanabhai Galabhai
 - xiii. Chandrabhushan Singh
 - xiv. Acharya Pareshkumar K.
 - xv. Kesharkar Prakash Pundlik
 - xvi. Patel Nikun Chhotalal
 - xvii. Thakor Shambhuji Shivaji
 - xviii. Thakor Rayajiji Shakaraji
 - xix. Raval Papatji Juhaji
 - xx. Thakor Jayantiji Kalaji
 - xxi. Chavada Mahendrabhai A.
 - xxii. Prajapati Lalabhai Mafatlal
 - xxiii. Parmar Vitthalbhai Shankarbhai
 - xxiv. Vaghela Shankarbhai Dhulabhai
 - xxv. Gayakwad Saranpal Shripati
 - xxvi. Dantani Manojkumar Jayantilal
 - xxvii. Prajapati Gunvantbhai R.
4. The names of the aforesaid workmen were deleted and the case was listed for 30.06.2015 for evidence of the remaining second party workmen. Since 30.06.2015, the remaining workmen as well as the Gujarat Petroleum Employees Union representing the workman have been absent and failed to lead evidence. Thus it appears that the remaining workmen are not willing to prosecute the case.
5. Therefore, the reference is disposed of with the observation as under with respect to the remaining 19 workmen: “the demand of the union for absorption/regularisation of Shri Maganabhai Dhurabhai Parmar and 45 other contract workers, by the management of ONGC Ltd., Ahmedabad is not legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जे.एम. सी. माइनिंग एण्ड क्वारी वर्क लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 923/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-29011/63/2003-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 923/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. JMC Mining & Quarry Works Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-29011/63/2003-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 4th January, 2017

Reference: (CGITA) No. 923/2004

The Managing Director,
JMC Mining & Quarry Works Ltd.,
At & Post Taluka Thasra,
Kheda (Gujarat)

...First Party

V/s

Shri Bhanuprasad Ramdas Sadhu,
C/o
Akhil Gujarat General Mazdoor Sangh,
2nd Floor, Arab Manzir,
Patharkuva, Relief Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party :

For the Second Party : Shri V.K. Kazi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-29011/63/2003-IR(M) dated 27.02.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Managing Director, JMC Mining & Quarry Works Ltd., Distt. Kheda in terminating services of Sh. Bhanuprasad Ramdas, Sadhu w.e.f. 09.06.2001 without paying any retrenchment compensation or one months’ notice or notice pay in lieu thereof is justified or legal? If not to what relief the workman is entitled to?”

1. The reference dates back to 27.02.2004. The second party submitted his statement of claim Ext. 4 on 21.04.2005 alleging that he joined the services of first party employer, JMC Mining & Quarry Works Ltd., here and after referred to as first party on 09.11.1994 as clerk. He was allotted the clerical work in the first party store department. Later he was transferred to despatch department. The duties which were to be performed by the workman was to take the measurement of the trucks ready for the lodging of materials, to prepare the various challan as required and also to prepare the daily reports of the despatches. His working hours are fixed from 08:00 AM to 08:00 PM in the first shift and from 08:00 PM to 08:00 AM. Thus he used to perform 12 hours duty in a day. He was used to be paid Rs. 3000/- per month. On 09.06.2001, newly appointed manager of the first party N.C. Patel suddenly terminated his services without giving any reason or written order. He used to perform his duty faithfully and diligently. The said action of termination without assigning any reason and also without giving any written order was against the standing orders and also in violation of the Section 25 F, G & H of the Industrial Disputes Act. The work he used to perform is still exists and the newly recruited persons have been doing the said jobs. Thus he has prayed for reinstatement with back wages.

2. This reference was originally registered with Industrial Tribunal, Nadiad on 27.02.2004, same was transferred to this tribunal vide Order No. Z-22019/6/2007-IR(C-II) dated 19.10.2010 of Ministry of Labour & Employment, New Delhi and the first party was informed vide notice Ext. 23 on 24.02.2011 to appear on 23.03.2011 but the notice received unserved. Therefore, the matter was ordered to proceed ex-parte. The second party workman submitted his affidavit Ext. 21 in support of his statement of claim reiterating the averments made therein. In his affidavit, he has stated that he was appointed on 09.12.1993 and worked till 06.06.2001 for more than 240 days in each year. Thus in the absence of the rebuttal of the first party, the reference deserves to be allowed and the question raised in the reference is decided as under:

The action of the management of Managing Director, JMC Mining & Quarry Works Ltd., Distt. Kheda in terminating services of Sh. Bhanuprasad Ramdas, Sadhu w.e.f. 09.06.2001 without paying any retrenchment compensation or one months' notice or notice pay in lieu thereof is unjustified or illegal.

3. The first party is directed to reinstate the second party workman within 60 days of the publication of this award and to pay Rs. 50000/- as compensation.

4. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स काण्डला डॉक लेबर बोर्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1035/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-37012/11/1996-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1035/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kandla Dock Labour Board and their workman, which was received by the Central Government on 30.01.2017.

[No. L-37012/11/1996-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd January, 2017

Reference: (CGITA) No. 1035/2004

The Dy. Chaimman,
Kandla Dock Labour Board,
Shramdeep, Kandla Port,
Kandla

...First Party

V/s

The General Secretary,
Transport and Dock Workers Union,
Room No. 21, Yogesh Building, Plot No. 586,
Ward 12-C, Gandhidham,
Kutch (Gujarat) – 370201

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri P.M. Vora

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37012/11/96-IR(M) dated 17.01.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Transport & Dock Workers Union, Gandhidham against the management of Kandla Dock Labour Board, Kandla, that Shri Mansukhlal Gancha, Driver (Motor) should be upgraded, with retrospective effect as per the recommendations of the Wage Revision Committee and orders of Government regarding up-gradation of post, just valid and legal? If so to what benefits the workman is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 17.01.1997. The second party submitted the statement of claim Ext. 2 on 08.07.1997 and the first party submitted the written statement Ext. 4 on 01.07.2003. Since then the second party has not submitted his evidence. However today on 02.01.2017, the workman's Union and workman have not pressed the reference and also requested to withdraw the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 101/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/10/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2014) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/10/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE SRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT/LOK ADALAT, KANPUR****Industrial Dispute No. 101 of 2014****Between :**

Sh. Yogesh Sharma S/o Sh. Radha Raman Sharma
 Village Bhagwanpura,
 Post Ading
 Distt. Mathura (UP)
 Mathura

And

The Executive Director,
 Indian Oil Corp. Ltd.,
 Mathura Refinery,
 Mathura-281005

AWARD

1. Central Government Mol, vide notification no.L-30012/10/2014-IR(M) Dated 28.08.2014, has referred the following dispute for adjudication to This Tribunal.
2. Whether the action of the management of Indian Oil Corporation Ltd., Mathura Refinery, Mathura M/S. G.S.Travels, Mathura in terminating the Services of Sh. Yogesh Shrma S/o Sh. Radha Raman Sharma workman w.e.f. July, 2008 is just, fair & legal? If not, what relief the workman concerned is entitled to?
3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filling his claim in the case.
4. On 16.12.2016, when the case was taken up neither the workman turned up nor filed his claim statement despite availing of sufficient opportunities. Therefore, it appears that the worker is not interested in prosecuting his claim before this tribunal. As such having no option left with the tribunal except to give an award in the case against the worker for want of pleadings and proof.
5. For the reason given above, award is passed against the worker holding that the worker is not entitled to any relief pursuant to the present Reference order for want of pleadings and proof.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 104/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/11/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 104/2014) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/11/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT/LOK ADALAT, KANPUR**Industrial Dispute No. 104 of 2014****Between :**

Shri Ram Narayan Singh S/o Sh. Roop Singh
Village & Post Baad,
Distt. Mathura (UP)
MATHURA.

And

The Executive Director,
Indian Oil Corp. Ltd.,
Mathura Refinery,
Mathura-281005

AWARD

1. Central Government Mol, vide notification no.L-30012/11/2014-IR(M) Dated 27.08.2014, has referred the following dispute for adjudication to This Tribunal.
2. Whether the action of the management of Indian Oil Corporation Ltd., Mathura Refinery, Mathura M/S Balaji Services, New Delhi in terminating the Services of Sh. Ram Narayan Singh S/o Sh. Roop Singh workman w.e.f. April, 2010 is just, fair & legal? If not, what relief the workman concerned is entitled to?
3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filling his claim in the case.
4. On 16.12.2016, when the case was taken up neither the workman turned up nor filed his claim statement despite availing of sufficient opportunities. Therefore, it appears that the worker is not interested in prosecuting his claim before this tribunal. As such having no option left with the tribunal except to give an award in the case against the worker for want of pleadings and proof.
5. For the reason given above, award is passed against the worker holding that the worker is not entitled to any relief pursuant to the present Reference order for want of pleadings and proof.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कॉर्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 105/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/9/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/2014) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/9/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE SRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT/LOK ADALAT, KANPUR****Industrial Dispute No. 105 of 2014****Between :**

Shri Ranvir Singh S/o Sh. Kharag Singh
 Village Jhandipur,
 Post Farah,
 Distt. Mathura (UP)
 MATHURA.

And

The Executive Director,
 Indian Oil Corp. Ltd.,
 Mathura Refinery,
 Mathura-281005

AWARD

1. Central Government Mol, vide notification no.L-30012/9/2014-IR(M) Dated 28.08.2014, has referred the following dispute for adjudication to This Tribunal.
2. Whether the action of the management of Indian Oil Corporation Ltd., Mathura Refinery, Mathura M/S. Manish Contractor, Mathura in terminating the Services of Sh. Ranveer Singh S/o Sh. Kharag Singh workman w.e.f. August, 2013 is just, fair & legal? If not, what relief the workman concerned is entitled to?
3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filling his claim in the case.
4. On 16.12.2016, when the case was taken up neither the workman turned up nor filed his claim statement despite availing of sufficient opportunities. Therefore, it appears that the worker is not interested in prosecuting his claim before this tribunal. As such having no option left with the tribunal except to give an award in the case against the worker for want of pleadings and proof.
5. For the reason given above, award is passed against the worker holding that the worker is not entitled to any relief pursuant to the present Reference order for want of pleadings and proof.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 106/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/8/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2014) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/8/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT/LOK ADALAT, KANPUR**Industrial Dispute No. 106 of 2014****Between :**

Sh. Vinod Kumar S/o Sh. Hakam Singh
51/702, Laxmi Nagar Bagicha,
Jamun Paar,
Distt. Mathura (UP)
MATHURA.

And

The Executive Director,
Indian Oil Corp. Ltd,
Mathura Refinery,
Mathura-281005

AWARD

1. Central Government Mol, vide notification no.L-30012/8/2014-IR(M) Dated 28.08.2014, has referred the following dispute for adjudication to This Tribunal.
2. Whether the action of the management of Indian Oil Corporation Ltd., Mathura Refinery, Mathura M/S Balaji Services, New Delhi in terminating the Services of Sh. Vinod Kumar S/o Sh. Hakim Singh workman w.e.f. March, 2010 is just, fair & legal? If not, what relief the workman concerned is entitled to?
3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filling his claim in the case.
4. On 16.12.2016, when the case was taken up neither the workman turned up nor filed his claim statement despite availing of sufficient opportunities. Therefore, it appears that the worker is not interested in prosecuting his claim before this tribunal. As such having no option left with the tribunal except to give an award in the case against the worker for want of pleadings and proof.
5. For the reason given above, award is passed against the worker holding that the worker is not entitled to any relief pursuant to the present Reference order for want of pleadings and proof.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अरुण उद्योग एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 25/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-43012/7/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2009) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Arun Udyoga and others and their workman, which was received by the Central Government on 30.01.2017.

[No. L-43012/7/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 25/2009

Date of Passing Award – 9th December, 2016

Between :

1. M/s. Arun Udyoga,
Contractor of Ostpal Chromite Mines of
M/s. FACOR, Po. Kansa, Ps. Tamaka,
Dist. Jajpur.
2. The Chief Executive (Mines),
M/s. FACOR Limited, Kuans,
Bhadrak.

...1st Party-Managements.

(And)

Shri Keshab Mohanta,
At. Ostia, Po. Chingudipal,
P.S. Tamaka, Dist. Jajpur

...2nd Party-Workman.

Appearances:

Shri D.R. Mohapatra	...	For the 1 st Party-Management No. 1.
Shri P.K. Sahoo, Law Officer	...	For the 1 st Party-Management No. 2.
None	...	For the 2 nd Party-Workman.

AWARD

The award is directed against a reference with following schedule:-

“Whether the action of management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Keshab Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? What relief the workman is entitled to?”

made by the Government of India, Ministry of Labour & Employment in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-43012/7/2009 – IR(M), dated 23.06.2009.

2. The disputant workman filed his claim statement alleging that he was appointed as a Tipper Driver from the year 2003 in the establishment of Management No. 1 and he was running the Tipper in the Mine area of the Management No. 2. When he raised a demand before the Management to provide him better medical facility and pay structure the Management did not allow him to discharge his duty from April, 2007 onwards. Hence he has made a prayer for his reinstatement with all back wages and service benefits.

3. In their common written statements both the Managements have taken a stand that the disputant workman was not given any appointment to work in any capacity in the Mines of the Management No. 2 and as such, submitted for dismissal of the claim.

4. Though issues like (1) whether the action of the management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Keshab Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? (2) what relief the workman is entitled to? were settled on the aforesaid pleadings of the parties and the case was posted for taking evidence of the parties, the workman did not turn up to adduce his evidence whereupon, the Management was heard exparte on the reference.

5. Though a pleading has been advanced on behalf of the workman that being appointed as a Tipper Driver by the Management No. 1 he was running the Tipper in the mines of the Management No. 2, neither any oral or documentary evidence is led before the Tribunal in support of such pleading to enable this Tribunal to find out if any relationship of

employer and employee exists between the parties and to adjudicate the dispute. Law is well settled that initial burden lies on the workman to prove the existence of relationship of employer and employee between the parties in order to avail any relief under the provisions of the I.D. Act. Having failed to prove his employment or engagement either under the Management No. 1 or 2 by giving any credible evidence, the workman is not entitled to the reliefs claimed by him.

6. Accordingly the reference is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अरुण उद्योग एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 26/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-43012/6/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2009) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Arun Udyoga and others and their workman, which was received by the Central Government on 30.01.2017.

[No. L-43012/6/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 26/2009

Date of Passing Award – 9th December, 2016

Between :

1. M/s. Arun Udyoga,
Contractor of Ostpal Chromite Mines of
M/s. FACOR, Po. Kansa, Ps. Tamaka,
Dist. Jajpur.
2. The Chief Executive (Mines),
M/s. FACOR Limited, Kuans,
Bhadrak.

...1st Party-Managements

(And)

Shri Harihar Mohanta,
At. Ostia, Po. Chingudipal,
P.S. Tamaka, Dist. Jajpur

...2nd Party-Workman

Appearances:

Shri D.R. Mohapatra

... For the 1st Party-Management No. 1.

Shri P.K. Sahoo, Law Officer	...	For the 1 st Party-Management No. 2.
None	...	For the 2 nd Party-Workman.

AWARD

The award is directed against a reference with following schedule:-

“Whether the action of management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Harihar Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? What relief the workman is entitled to?”

made by the Government of India, Ministry of Labour & Employment in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-43012/6/2009 – IR(M), dated 22.06.2009.

2. The disputant workman filed his claim statement alleging that he was appointed as a Tipper Driver from the year 2003 in the establishment of Management No. 1 and he was running the Tipper in the Mine area of the Management No. 2. When he raised a demand before the Management to provide him better medical facility and pay structure the Management did not allow him to discharge his duty from April, 2007 onwards. Hence he has made a prayer for his reinstatement with all back wages and service benefits.

3. In their common written statements both the Managements have taken a stand that the disputant workman was not given any appointment to work in any capacity in the Mines of the Management No. 2 and as such, submitted for dismissal of the claim.

4. Though issues like (1) whether the action of the management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Harihar Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? (2) what relief the workman is entitled to? were settled on the aforesaid pleadings of the parties and the case was posted for taking evidence of the parties, the workman did not turn up to adduce his evidence whereupon, the Management was heard exparte on the reference.

5. Though a pleading has been advanced on behalf of the workman that being appointed as a Tipper Driver by the Management No. 1 he was running the Tipper in the mines of the Management No. 2, neither any oral or documentary evidence is led before the Tribunal in support of such pleading to enable this Tribunal to find out if any relationship of employer and employee exists between the parties and to adjudicate the dispute. Law is well settled that initial burden lies on the workman to prove the existence of relationship of employer and employee between the parties in order to avail any relief under the provisions of the I.D. Act. Having failed to prove his employment or engagement either under the Management No. 1 or 2 by giving any credible evidence, the workman is not entitled to the reliefs claimed by him.

6. Accordingly the reference is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अरुण उद्योग एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 27/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-43012/5/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2009) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Arun Udyoga and others and their workman, which was received by the Central Government on 30.01.2017.

[No. L-43012/5/2008-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 27/2009

Date of Passing Award – 9th December, 2016

Between :

1. M/s. Arun Udyoga,
Contractor of Ostpal Chromite Mines of
M/s. FACOR, Po. Kansa, Ps. Tamaka,
Dist. Jajpur.
2. The Chief Executive (Mines),
M/s. FACOR Limited, Kuans,
Bhadrak.

...1st Party-Managements

(And)

Shri Antaryami Mohanta,
At. Krshnapur, Po. Anal,
P.S. Bhubana, Dist. Dhenkanal

...2nd Party-Workman

Appearances:

Shri D.R. Mohapatra	...	For the 1 st Party-Management No. 1.
Shri P.K. Sahoo, Law Officer	...	For the 1 st Party-Management No. 2.
None	...	For the 2 nd Party-Workman.

AWARD

The award is directed against a reference with following schedule:-

“Whether the action of management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Antaryami Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? What relief the workman is entitled to?”

made by the Government of India, Ministry of Labour & Employment in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-43012/5/2008 – IR(M), dated 29.06.2009.

2. The disputant workman filed his claim statement alleging that he was appointed as a Tipper Driver from the year 2003 in the establishment of Management No. 1 and he was running the Tipper in the Mine area of the Management No. 2. When he raised a demand before the Management to provide him better medical facility and pay structure the Management did not allow him to discharge his duty from April, 2007 onwards. Hence he has made a prayer for his reinstatement with all back wages and service benefits.

3. In their common written statements both the Managements have taken a stand that the disputant workman was not given any appointment to work in any capacity in the Mines of the Management No. 2 and as such, submitted for dismissal of the claim.

4. Though issues like (1) whether the action of the management of M/s. Arun Udyoga, Contractor of Ostpal Chromite Mines, M/s. FACOR Ltd., in terminating the services of Shri Keshab Mohanta, Heavy Vehicle Driver w.e.f. 1.4.2007 is legal and/or justified? (2) what relief the workman is entitled to? were settled on the aforesaid pleadings of the parties and the case was posted for taking evidence of the parties, the workman did not turn up to adduce his evidence whereupon, the Management was heard exparte on the reference.

5. Though a pleading has been advanced on behalf of the workman that being appointed as a Tipper Driver by the Management No. 1 he was running the Tipper in the mines of the Management No. 2, neither any oral or documentary

evidence is led before the Tribunal in support of such pleading to enable this Tribunal to find out if any relationship of employer and employee exists between the parties and to adjudicate the dispute. Law is well settled that initial burden lies on the workman to prove the existence of relationship of employer and employee between the parties in order to avail any relief under the provisions of the I.D. Act. Having failed to prove his employment or engagement either under the Management No. 1 or 2 by giving any credible evidence, the workman is not entitled to the reliefs claimed by him.

6. Accordingly the reference is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फेरो स्क्रेप निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 42/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-29011/17/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Ferro Scrap Nigam Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-29011/17/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 42/2013

L-29011/17/2013-IR (M), dated 28.05.2013

Date of Passing Order – 6th December, 2016

Between :

The Assistant General Manager, in-charge,
Ferro Scrap Nigam Ltd., Post Box No. 19,
Inside Rourkela Steel Plant, Rourkela,
Dist. Sundargarh, Odisha

...1st Party-Management.

(And)

The General Secretary,
Rourkela Shramik Sangh, Shramik Mandir,
Qrs. No. D-81, Sector 18, Rourkela – 769 003,
Dist. Sundargarh, Odisha

...2nd Party-Union.

Appearances:

None	...	For the 1 st Party-Management.
None	...	For the 2 nd Party-Union.

ORDER

Authorized representative for the 1st Party-Management is present. None is present for the 2nd party-Union on repeated calls. Perusal of the case record reveals that the 2nd party-Union filed its statement of claim on 09.07.2013, whereas the 1st Party-Management on being noticed filed its written statement on 28.1.2014. On the pleadings of the parties issues were settled on 02.12.2014. Thereafter the case was posted for evidence of the 2nd party-Union from time to time. Neither the 2nd party-Union has appeared nor has filed any affidavit evidence under Order 18 Rule 4 C.P.C. for which notice was issued to them fixing 10.3.2016 for his appearance and to adduce evidence. As none is present from the side of the 2nd Party-Union on the date fixed it seems that either the 2nd party-Union is not interested to prosecute the dispute or the dispute might have been settled amicably out of the Tribunal. In the above back-drops there is no alternative than to pass a no-dispute award and accordingly a no-dispute award is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर. के. मार्बल्स प्रा. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 62/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-28012/3/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2015) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R.K. Marbles Pvt. Ltd. and their workman, which was received by the Central Government on 30.01.2017.

[No. L-28012/3/2015-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 62/2015

Reference No. L- 28012/3/2015-IR (M) Dated: 4.6.2015

Sh. Rameswarlal
S/o Sh. Chunni Lalji Bhat
Residents – Kheda Jassa, Diver,
Tehsil – Bhim, Distt. – Rajsamand,
Rajsamand (Rajasthan)

V/S

The General Manager
M/s. R.K. Marbles Pvt. Ltd.,
Morwad, Distt. Rajsamand (Rajasthan)
Rajsamand – 313901.

AWARD

21.12.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the Management of M/s. R.K. Marbles Pvt. Ltd., Morwad, Distt. Rajsamand (Raj) in terminating the services of Sh. Rameswarlal S/o Sh. Chunni Lalji Bhat w.e.f. 26.3.14 is justified? If not, what relief the workman is entitled to?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 16.11.2015 for filing statement of claim. On 16.11.2015 both the parties appeared before the tribunal & case was adjourned on the request of applicant for filing statement of claim till 25.1.2016. On 25.1.2016 both the parties appeared & applicant prayed for adjournment which was allowed fixing 4.4.2016 for filing statement of claim. On 4.4.2016 learned representative of both the parties appeared & authority on behalf of applicant was filed. Learned representatives & learned advocates were out of work on account of condolence. Adjournment in favour of applicant was allowed fixing 24.5.2016 for filing statement of claim.
3. On 24.5.2016 learned representative for opposite party Sh. Nitin Kumar Jain appeared. None appeared on behalf of applicant however, case was adjourned in interest of justice providing opportunity to the applicant to file statement of claim by next date 8.8.2016. On 8.8.2016 neither anyone appeared on behalf of applicant nor statement of claim was filed. Learned representative on behalf of opposite party was present. Presiding Officer was on leave. Case was adjourned fixing 24.10.2016 for filing statement of claim.
4. On 24.10.2016 neither anyone appeared on behalf of applicant nor statement of claim was filed. Sh. Achal Singh Rathore, Manager (Personnel & Administration) appeared on behalf of opposite party & objected to providing opportunity to the applicant in spite of absence of applicant & in presence of opposite party. It was further contended that if tribunal provides further opportunity to the applicant then it may be last opportunity to file statement of claim. Accordingly, further one more opportunity was given to the applicant in interest of justice as last opportunity for filing statement of claim on 24.11.2016.
5. On 24.11.2016 neither anyone appeared on behalf of applicant nor statement of claim was filed. Learned representative on behalf of opposite party came in appearance & objected to none filing of statement of claim by applicant & requested to close the further proceeding & not to give further opportunity to the applicant, however, case was adjourned providing last opportunity to the applicant for filing statement of claim on 20.12.2016. It is pertinent to note that learned counsel came in appearance after order & he was informed about the order dated 24.11.2016 providing last opportunity to the applicant for filing statement of claim till 20.12.2016. On 20.12.2016 none appeared on behalf of applicant & statement of claim was also not filed. Learned representative for opposite party came in appearance & objected to providing any further opportunity to the applicant & alleged that applicant has been in appearance since 16.11.2015 but has failed to file statement of claim hence, further proceeding may be closed. On 20.12.2016 till 17.45 hours neither anyone appeared on behalf of applicant nor statement of claim was filed. Accordingly, further opportunity to the applicant for filing statement of claim was closed & case was reserved for award.
6. It is pertinent to note that reference order dated 4.6.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding against the reference under adjudication on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.
7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 13/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.02.2017 को प्राप्त हुआ था।

[सं. एल-17011/5/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 03.02.2017.

[No. L-17011/5/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 21st day of December, 2016**INDUSTRIAL DISPUTE No. I.D. 13/2014****Between:**

The President,
Insurance Employees Union
7-530, Godugpet, Turlapativari Street,
Machilipatnam- 521001 Krishna District
Andhra Pradesh

...Petitioner

AND

The Sr. Branch Manager,
LIC of India, Branch Office, City Branch (686)
Jeevan Krishna, Besant Road,
Vijayawada – 520002
Krishna District, Andhra Pradesh

...Respondent

Appearances :

For the Petitioner : Sarosh Bastawala, Advocate

For the Respondent : Shri BSR Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/5/2013-IR(M) dated 21.08.2013 referred the following dispute between the management of M/s LIC of India and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

“Whether the demand of Insurance Employees Union, Machilipatnam to regularize services of Sh Tokala Satish Kumar and Sh Sanam Durga Rao as peons in the LIC of India Branch-I (686), Vijayawada Branch Office is legal and justified? If not, what relief the workmen are entitled?”

The reference is numbered in this Tribunal as I.D. No. 13/2014 and notices were issued to the parties concerned to appear before this tribunal on 2.4.2014.

2. On 2.4.2014, Shri Saroth Bastawala, Advocate filed vakalath for petitioner and sought time to file claim statement. The case is adjourned for several dates i.e. 3.4.2014, 30.4.2014 so on and finally for today i.e. 21.12.2016. For the last six adjournments, both petitioner union and Respondent remained absent inspite of repeated calls.

3. In spite of availing several opportunities, the petitioner has not filed claim statement. the Petitioner union and Respondent remained absent and there is no representation on behalf of the Petitioner union as well as Respondent, which clearly indicates that perhaps the dispute of the Petitioner unions has already been settled. In the circumstances stated above, it is felt that the Petitioner union is not interested in pursuing the dispute. Thus, ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri J Vijaya Sarathi, Secretary to the Court, corrected by me on this the 21st day of December, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 6 फरवरी, 2017

का.आ. 330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एच. डी.एफ.सी. स्टैंडर्ड लाइफ इंश्योरेंस कं. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 44/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.02.2017 को प्राप्त हुआ था।

[सं. एल-17012/116/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2014) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. HDFC Standard Life Insurance Company Ltd. and their workman, which was received by the Central Government on 03.02.2017.

[No. L-17012/116/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. K. Sasidharan, B. Sc., LLB, Presiding Officer

(Monday the 26th day of December, 2016/05th Pausha, 1938)

ID No. 44/2014

Union : The General Secretary,
New Generation Banks & Insurance Employees Sangh,
BMS State Office, Marayii Lane,
Chittoor Road, Ernakulam, Cochin
COCHIN – 682018.

By Advs. Shri. T. C. Krishna & Shri C. Anil Kumar

Management : The Director (HR),
Corporate Office,
HDFC Standard Life Insurance Company Ltd.,
12th & 13th Floor, Lodha Enclave,
Appolo Mills Compound,
N. M. Joshi Road, Mumabi
MUMBAI - 11.

By Adv. Shri. Saji Isaac. K. J.

This case coming up for final hearing on 16.12.2016 and this Tribunal-cum-Labour Court on 26.12.2016 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication before this Tribunal is:

“Whether the action of the management of HDFC Standard Life Insurance Company Ltd. in dismissing two workmen S/Shri Ajith Chandran and Shynu V. K. from service is justifiable? If not, what relief the union/workman are entitled to get?”

3. After the receipt of reference Order No.L-17012/116/2014-IR(M) dated 02.09.2014, issued by the Ministry of Labour, Government of India, summons was issued to the parties to submit their pleadings, produce documents and adduce evidence to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The contentions in the claim statement filed by the union in brief are as follows:

The workmen involved in this reference S/Shri Ajith Chandran and Shynu. V. K. were employed as Business Development Managers under the management establishment. Shri. Shynu. V. K. joined the management establishment on 18.02.2008 as Sales Development Manager and in November, 2008 he was posted as Business Development Manager. Shri. Ajith Chandran joined in the management establishment on 31.08.2012 as Business Development Manager. Even though the workmen were designated as Business Development Managers, they were not entrusted with any managerial, administrative or supervisory powers. They have to organize and develop the business of the management in the area allotted to them, for which they have to recruit active and reliable agents provide training to them, canvass new business and assist such agents in discharge of their duty. The workmen were not having the authority to appoint or initiate disciplinary action against any of the agents. They were not having the power to supervise the work of the agents except to provide assistance in discharging their work. The job of the workmen was akin to that of the development officers in Life Insurance Corporation. Therefore they will come under the purview of “workman” as defined under Section 2(s) of the Industrial Disputes Act, 1947.

5. Shri. Ajith Chandran was the District Secretary of the New Generation Banks & Insurance Employees’ Sangh of Trichur unit and Shri. Shynu. V. K. was the State Secretary. Both of them were actively involved in the union activities. The union submitted a charter of demands as per notice dated 02.01.2013 before the management in relation to the wage revision and illegal termination of some employees working under the management. The management was not ready to negotiate the dispute and resolve the issues. The union called for a strike on 27.03.2013 and a demonstration was held. Shri. Ajith Chandran and Shri. Shynu. V. K. led the demonstration against the management. On the next day i.e., on 28.03.2013 the management dismissed them from service.

6. The termination of the workmen by the management was summary, against law and in flagrant violation of the principles of natural justice. No valid notice or notice pay was given to the two workmen. Moreover the management has not issued any show cause notice or conducted enquiry against the workmen. The reason for termination stated by the management was not genuine. The workmen never involved in any illegal activity nor committed any misconduct. They have not done any act affecting the confidence reposed in them. They were subjected to unfair labour practice and victimization for their active involvement in trade union activities.

7. The workmen were getting a total emolument of ₹23,500/- per month by way of salary. Ever since the date of termination they are not having any employment. Therefore the workman have requested to pass an award directing the management to reinstate them in service with full back wages, continuity of service and all other benefits thereof.

8. The contentions in the written statement filed by the management in brief are as follows:

The management has denied all the averments in the claim statement filed by the union except those that are specifically admitted. Shri. Ajith Chandran and Shri. Shynu. V. K. were appointed as Business Development Managers with managerial functions. Both of them were employed in the managerial/administrative and supervisory capacity. They were responsible for effectively managing the office management of the branch. Therefore they are not employees/workmen as defined under the Industrial Disputes Act. Hence this Tribunal has no jurisdiction to adjudicate the issue referred for decision. The management has requested to consider this aspect as a preliminary point.

9. Without prejudice to the contentions raised above, the management has stated that the contentions of the workmen that they led strike against the management, which infuriated them and on the very next day they were dismissed from the service is false and incorrect. Shri. Shynu. V. K. and Shri. Ajith Chandran affiliated to the union

threatened the employees of the management causing disruption to the office work. They posed serious threat to the employees working under the management. Shri. Shynu. V. K. indulged in activities such as displaying poster, wrongfully restraining fellow employees from attending the training programme and instigated them not to solicit business. They intimidated the other workers with text messages and phone calls with dire consequences. The management was constrained to sever the services of S/Shri. Shynu. V. K. and Ajith Chandran for the reason that they have grossly violated the conduct to be maintained at the workplace. The management submitted a complaint before the Circle Inspector of Police, Nadakkavu police station relating to this incident.

10. After serving the letter by the management to S/Shri. Shynu. V. K. and Ajith Chandran, they along with other members of the union came inside the office of the company, broke the laptops and disrupted the functioning of the office. They also manhandled some employees of the management who had to take medical care. The management approached the Hon'ble High Court for police protection by filing WP(C) No.10700/2013. As per the order in that Writ Petition, the Hon'ble High Court of Kerala directed the Circle Inspector of Police, Nadakkavu police station to provide adequate protection those employees who are working in the company and for the free ingress and egress of customers to the office at Chakkorathukulam against the union and its Secretary Shri. Shynu. V. K. Both S/Shri. Ajith Chandran and Shynu. V. K. created problems affecting the functioning of the office of the management. The actions of S/Shri. Shynu. V.K. and Ajith Chandran were detrimental to the interest of the company. They have violated the procedure and code of conduct as per the terms and conditions of appointment. Accordingly they were terminated without notice. Their performance was below the defined targets as applicable from time to time.

11. The averment that the management has not issued any show cause notice preceding the termination is not correct. The further averment that the workmen never indulged in any illegal activities, has not done any act of misconduct, is false and incorrect. The contention that the workmen were subjected to unfair labour practice and victimization is false and incorrect. They have requested to uphold their contentions.

12. After filing written statement by the management the counsel for the management filed IA No.132/2015 requesting to consider the maintainability of the reference, as a preliminary point. As per the order in that application it is held that the industrial dispute raised by the union at the instance of S/Shri. Ajith Chandran and Shynu. V. K. is not maintainable before this Tribunal for the reason that both of them will not come under the purview of "workman" as defined under Section 2(s) of the Industrial Disputes Act.

13. After the disposal of that Interlocutory Application the matter was heard in presence of the counsel appearing for the parties.

14. The point for arising for consideration is:

"Whether the dispute raised at the instance of the union in respect of S/Shri. Ajith Chandran and Shynu. V.K. is maintainable before this Tribunal?"

The Point:-

15. The contention of the workmen involved in this reference S/Shri. Ajith Chandran and Shynu. V. K. are that they were working as Business Development Managers under the management. They have stated that they have to organize and develop the business for the management in the area allotted to them, for which they have to recruit active and reliable agents, train them, canvass new business and assist the agents in discharging their duties. It is stated that the workmen involved in this reference have no power to supervise the work of the agents except to assist them in discharging their duties. It is stated that the job of the workmen involved in this reference was akin to that of the development officers in Life Insurance Corporation of India and as such they will come under the purview of "workman" as defined under Section 2(s) of the Industrial Disputes Act. They have stated that their monthly emolument was ₹23,500/- by way of salary.

16. The management has contended that the workmen involved in this reference namely, S/Shri. Ajith Chandran and Shynu. V. K. were appointed as Business Development Managers and they were performing the managerial and administrative functions and they were responsible for effectively managing the office management of the branch. Therefore the management has contended that S/Shri. Ajith Chandran and Shynu. V. K. are not "workmen" as defined under Section 2(s) of the Industrial Disputes Act.

17. The learned counsel for the management referred to the *Ruling reported in 1994 (5) SCC 737 H. R. Adyanthaya Vs. Sandoz (India) Limited & Ors. wherein the Hon'ble Supreme Court has held that:*

"Medical representatives do not perform duties of skilled and technical nature and, therefore they are not workmen."

In the Ruling reported in AIR 2015 SC 2275 – Chauharya Tripathi & Ors. Vs. LIC of India & Ors. wherein the Hon'ble Supreme Court has held that:

“the Development Officers working in the LIC are not workman as defined under Section 2(s) of the Industrial Disputes Act.”

18. The workmen have in clear terms admitted that their work is akin to that of the Development Officers working in the Life Insurance Corporation of India. In the decision referred above the Hon'ble Supreme Court has held that the Development Officers working in the LIC are not “workman” as defined under Section 2(s) of the Industrial Disputes Act. In view of the dictum laid down by the Hon'ble Supreme Court in the decision referred above it is evident that the dispute referred for adjudication at the instance of the union for and on behalf of S/Shri Ajith Chandran and Shynu. V. K. is not maintainable before this Tribunal for the reason that both of them will not come under the purview of “workman” as defined under Section 2(s) of the Industrial Disputes Act.

19. Therefore the point for consideration is answered against the union and in favour of the management.

20. In the result an award is passed holding that this Tribunal has no jurisdiction to adjudicate the dispute referred for decision for the reason that the persons involved in this reference i.e., S/Shri Ajith Chandran and Shynu. V. K. will not come under the purview of “workman” as defined under Section 2(s) of the Industrial Disputes Act, 1947.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 26th day of December, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX - NIL

नई दिल्ली, 6 फरवरी, 2017

का.आ. 331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 62/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-17012/6/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2009) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 30.01.2017.

[No. L-17012/6/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 62/2009

Sh. Rajveev Kumar

... Workman

Versus

L.I.C of India

... Respondent

AWARD

Labour Ministry of Govt. of India send reference No-L-17012/6/2009-IR(M) dated 5.10.2009 to the CGIT-Cum-Labour Court-2, Karkardooma Court Complex Delhi for adjudication.

Which was register on 13/10/2009 as I.D. No. 62 of 2009.

Notice was issued to workman/respondent for filing of claim statement/response to reference. After service of notice workman filed claim statement on 30/12/2009. Wherein he alongwith other facts pleaded that he had been in employment of Management of L.I.C. Modipura Branch, Meerut (U.P) since 26.4.2004 to 2.1.2005 on the monthly salary of Rs.1958/-. He was appointed as waterman cum fourth class employee.

He served the management and his superiors with full devotion and dedication to the utmost satisfaction of the management during entire tenure of services.

He continuously worked for more than 240 days. Even then his services were orally and illegally terminated on 3.1.2005. At the time of his illegal termination he was not paid compensation according to provisions of Section 25-F I.D. Act 1947 and arrears of his salary etc.

Workman send demand notice through registered post-to management for his reinstatement, back wages, continuity of his services and salary of July 2004 to January 2005 which was served upon management but management neither considered it nor complied the same.

That workman presented his dispute before Conciliation officer/Assistant Labour Commissioner (Central) Dehradun but the Conciliation officer send failure report to the Ministry of Labour for making the reference to this tribunal for adjudication in the matter.

Labour Ministry of Govt. of India send reference to this Tribunal for adjudication :

“Whether Sh Rajeev Kumar, temporary waterman-cum-peon has worked with L.I.C of India, Modipuram Branch for the period from 26.4.2004 to 2.1.2005? If so, whether the action of the management of L.I.C of India is discharging/terminating his service w.e.f. 3.1.2005 is just and legal? What relief the workman is entitled to?”

Through claim statement workman prayed for his reinstatement in service with full back wages and continuity of services along with all legal perks.

Copy of claim statement supplied to Ld. A/R for Management on 30.12.2009 and fixed 26.2.2010 for filing of written statement by my Ld. Predecessor. On 26.2.2010 management sought adjourned which allowed and case was adjourned to 20.5.2010 for filing of written statement. by Ld. Predecessor.

On 20/5/2010 management again sought adjournment which was allowed and case was adjourned to 16.7.2010 for filing of written statement.

On 16.7.2010 management filed its written statement. after about six half month although I.D case is required to be decided within three months according provisions of I.D Act, 1947.

Copy of written statement supplied to Ld. A/R for workman by Ld. A/R for management on 16.7.2010 and 22.10.2010 was fixed for filing rejoinder.

On the basis of contents of written statement management of L.I.C prayed that the claim of the workman may kindly be dismissed and same be dismissed with heavy cost(s).

On 22/10/2010 workman filed his rejoinder. Through which the reaffirmed the contents of claim statement. On 22.10.2010 my Ld. Predecessor fixed 21.12.2010 for framing of issues etc.

On 21.12.2010 it was submitted by Ld. A/Rs for parties that no issue other than the one sent by the Labour Ministry of Central Government is to be framed. Hence my Ld. Predecessor fixed 21.3.2011 for evidence of the workman by way of affidavit.

On 21.3.2011 workman sought adjournment which was allowed and case was adjourned to 8/7/2011.

On 8.7.2011 workman filed his affidavit in his evidence. Copy of which supplied to other party and fixed 6/9/2011 for statement of workman.

On 9.6.15 application dated 11.12.2013 and 8.1.2015 of workman has been disposed off by me through following order :-

“I have heard the arguments on the point of disposal of application dated 11.12.2013 and application dated 8.1.2015 and its relative objections. Application dated 8.1.2015 has been moved by workman to direct the management to produce the documents mentioned in it. But objections/reply of aforesaid application shows that such documents are not are not in possession of management as workman is contractual employee.

It is also alleged by Ld. A/R for the management that original documents shall be in possession of workman. In these circumstances management cannot be directed to produce the documents mentioned in application dated

8.1.2015. But workman shall be at liberty to adduce secondary evidence in this respect. As the stage of workman evidence which is running.”

Through, application dated 11.12.2013 workman sought permission to file additional affidavit alongwith Photostat copies of certain documents annexed with application.

As case is running at the stage of workman evidence. So in the interest of justice application dated 11.12.2013 is allowed. Fixed 13.7.2015 for workman evidence.”

On 18/8/15 workman tendered his affidavit and his additional affidavit along annexed documents and I fixed 23.9.15 for cross examination of WW1.

On 23.9.15 cross examination of WW1 concluded and I fixed 20.11.15 for remaining evidence of workman.

On 5.1.16 remaining/further evidence of workman closed by Ld. A/R for workman on the instruction of workman and I fixed 17.2.16 for management evidence.

On 17.2.16 management filed affidavit of MW1. Copy of which supplied to workman. Fixed 14.3.16 for tender of affidavit of MW1 and his cross examination.

On 14.3.16 – MW1 tendered his affidavit and he was partly cross examined and 19.4.16 was fixed for his remaining cross. MW1 was directed to come with file or personal Dairy on 19.4.16.

On 19.4.16 MW1 in compliance of my previous order filed official letter to show that documents called for are not available in office of Management. Letter was introduced on record. Thereafter MW1 was further cross examined.

His cross examination concluded. Afterward Ld. A/R for management on the instruction of MW1 closed evidence of management.

Fixed 4/7/16 for arguments. On 4.7.16 workman himself sought adjournment. Hence case was adjourned to 1.8.16.

On 1.8.16 with the consent of parties the case adjourned to 23/8/16. On 23/8/16 Ld. A/R for workman orally argued. He expressed his desire to file written argument hence I fixed 6.10.16.

On 6.10.16 workmen sought adjournment which was allowed and case was adjourned to 19.10.16.

On 19.10.16 written argument on behalf of workman filed. Copy of which supplied to management. Fixed 2.11.16 for filing of written argument by management.

On 2.11.16 written argument filed by management. Copy supplied to workman. Workman also filed additional written argument. Copy supplied to mgt. I fixed 21.11.16 for filing of additional written argument by mgt. if any.

On 21.11.16 additional written argument by Mgt filed. Then I reserved the award.

In the light of contentions and counter contentions of Ld. A/Rs for the parties. I perused the pleadings and evidence of parties, contents of written argument and principles laid down in cited rulings including settled law of Hon'ble Supreme Court etc. on the points raised by Ld. A/Rs for the parties.

Perusal of reference shows that it was sent to this Tribunal for adjudication. Which contains following questions of determination mentioned in schedule of reference.:-

1. Whether Sh. Rajeev Kumar Temporary Waterman-Cum-Peon has worked with L.I.C of India Modipuram Branch for the period from 26.04.2004 to 2.01.2005 i.e. 252 days ? If so, whether the action of the management of L.I.C in disengaging /terminating his services w.e.f 3.01.2005 is just and legal?
2. What relief the workman is entitled to ?

Notices were sent to claimant /respondent /management of L.I.C to file claim statement /response to reference.

Workman filed claim statement. Where-in he pleaded that he worked since 26.04.2004 up-to 2.01.2005. his Salary was Rs. 1958/- p.m.

The case of workman is that he worked after 19.07.2004 till 2.01.2005.

Workman claimed reinstatement with back wages including his unpaid wages since 1.07.2004 to 2.01.2005.

Management filed its written statement on 16.07.2010. Where-in it alleged that workman worked since 23.04.2004 to 19.07.2004.

Workman himself has not claimed his working in management of L.I.C. since 23.04.2004.

It is relevant to mention here that date 23.04.2004 is the date of issuance of appointment letter to workman.

It appears that due to inadvertence in instruction to Ld. A/R for the management such date has been mentioned in written statement as date of commencement of working of workman.

It is further relevant to mention here that management of L.I.C. pleaded that bills /memo and attendance register filed in evidence by workman are fake and manipulated.

Workman through his reliable and credible oral evidence and permissible documentary evidence proved his case. L.I.C. could not produce any evidence of fakeness and maculation of bills/Memo and attendance register.

Aforesaid stand of management appears to have been taken by it to defeat the benefit accruing to workman u/s 25-B(1) I.D. Act and S.25-F I. D. Act as no retrenchment compensation was provided by management to workman.

As per settled law of Hon'ble Supreme workman is entitled to reinstatement with full back wages including his unpaid salary since 1.07.2004 to 2.01.2005 at the rate of Rs. 1958/- p.m. because in the instant case employer/management of L.I.C. could not prove gainful employment of workman as per principle laid down by their Lordship of Hon'ble Supreme Court in case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.E.D) & Ors. (2013) 10 S.C.C 324.

Which has been followed by his Lordship of Hon'ble High Court of Rajasthan in case of Manager Muslim Musafir Khana Moti Doongri Jaipur Vs. Zahir Khan 2016 L.L.R.1257 .

It is relevant to mention here that as per settled law S. 25-f of I.D. Act 1947 is applicable to ad hoc temporary employees, badly workman or to a daily rated workman so question of determination No.1 & 2 mentioned in the schedule of reference are liable to be decided in favour of workman and against management.

After decision of case of H.D. Singh Vs. R.B.I(1985) 4 S.C.C. 201 it is settled law of Hon'ble Supreme Court that employers failure to produce the attendance register to controvert the workman's claim as to the number of days he had actually worked , will lead to an inference of the correctness of the workman's claim.

In the instant case workman on 8.01.2015 moved an application for summoning the original attendance register. But management submitted report that original attendance register is not in possession of management as workman is contractual employee then this Tribunal on 9.6.2015 passed detailed order and permitted workman to lead secondary evidence. Which he produced and proved that he worked for more than 240 days continuously in a calendar year hence he is entitled for benefit of Sub. S(1) of S.25-B of I. D. Act His oral and secondary evidence on the points of documents mentioned in his application u/s 11(3) I.D. Act is required reliable and credible evidence specially in this case. Wherein management of L.I.C. is withholding material evidence. So adverse inference against management of L.I.C. is also being drawn as per provisions of S.114(g) of Indian Evidence Act as well as settled law of Hon'ble Supreme Court on this point. Which has been followed in the recent decision of Hon'ble Supreme Court in case of Union of India vs. Ibrahim uddin & Anr.

On the basis of aforesaid discussion I am of considered view that questions of determination No.1 & 2 mentioned in the schedule of reference and treated as Issue No. 1 is liable to be decided in favour of workman and against management of L.I.C. Which accordingly decided.

As question of determination No. 1 & 2 has already been decided in favour of workman. Hence question and determination No. 3. Which is relating to relief is also liable to be decided in favour of workman and against management of L.I.C. Which are accordingly decided.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

Claim statement is allowed. Workman Sh. Rajeev Kumar is reinstated with full back wages including unpaid wages since 1.07.2004 to 2.1.2005 and continuity of services . Management is directed to comply the Award within two months after expiry of period of available remedy against this Award.

Award is accordingly passed.

Dated:-28/12/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 85/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-11025/1/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport Authority of India and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-11025/1/2017-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI

ID NO. 85/2013

Shri Gorav S/o Sh. Pratap Singh,
R/o H. No. 167, Malikpur,
Delhi – 110009

...Workman

Vs.

1. M/s. Airport Authority of India
(Domestic Wing) Palam Airport,
New Delhi
2. M/s. Saxsons Air Services Pvt. Ltd.
8/10, Mehram Nagar, Delhi Cantt.
Opp. Domestic Airport,
New Delhi – 110010

...Management

AWARD

This case has been directly filed under the provision of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act) by the claimant with the averment that he was engaged as a helper on salary of Rs. 5000 per month. He has been performing his duty sincerely and honestly without any complain from the management.

2. It is the case of the claimant that he was not being paid all the facilities available to a workman under the labour laws, such as E.S.I, P.P.F., Bonus etc. The officials of the management obtained signature of the claimant on certain blank paper by giving false assurance of grant of the above facilities to the claimant. The salary of the claimant for the months of August 2011, September 2011 and October 2011 was withheld on 01/11/2011. When claimant approached the management on 01/11/2011 for the payment of salary, he was given flat refusal. Thus, services of the claimant was illegally terminated in violation of section 25-F and 25-G of the Act. Thereafter, on 05/07/2012 claimant wrote to the management to reinstate him in service, but of no use.

3. It is alleged in Para 5 of the claim statement that claimant raised the dispute before A.L.C. on 17/01/2013 which ultimately under in failure. Lastly, a prayer has been made by the claimant for his reinstatement with all benefits of back wages.

4. The management did not file written statement despite grant of several opportunities. Since, no written statement was filed on behalf of the management as such defence of the management was struck off vide order dated 28/04/2016. Thereafter, the case was listed for evidence of the claimant.

5. It is clear from the perusal of the record that claimant was granted three opportunities to bring evidence and evidence of the claimant was not present even today. Thus, there is total remissness on part of the claimant to bring evidence.

6. The claimant has not entered into the witness box, so as to support the averments made in the statement of claim nor any document has been proved by the claimant in the case. In such circumstances, this Tribunal is left with no choice except to pass 'no claim' award. Accordingly, no claim/no dispute award in the present case for want of evidence is passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: January 11, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कुमार इंटरप्राइजेज एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 139/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/15/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 6th February, 2017

S.O. 333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kumar Enterprises and other and their workman, which was received by the Central Government on 30.01.2017.

[No. L-30012/15/2015-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, KARKARDOOMA COURT COMPLEX, DELHI

ID NO. 139/2015

Shri Vikram Singh,
S/o Shri Uday Pal Singh,
D-3/90, Sector-20, Rohini,
New Delhi-
New Delhi-110086

...Workman

Versus

1. M/s. Kumar Enterprises,
F-55 (1st Floor),
Kirti Nagar,
New Delhi-
New Delhi-110015

2. M/s. IGL,
Sector-9,
R.K.Puram,
New Delhi-
New Delhi-110022

...Managements

AWARD

Central Government, vide letter No.L-30012/15/2015-IR(M) dated 25.05.2015, referred the following industrial dispute to this Tribunal for adjudication:-

“Whether the removal of Sh. Vikram Singh w.e.f. 03/08/2014 was against the provisions of Industrial Disputes Act 1947 ? If Yes, to what relief is the workman entitled to ?”

2. Both the parties were put to notices and claimant thereafter filed Statement of Claim. It is alleged that he was employed with the management since 04/06/2010 as “Daily Salesman” (work of Gas filling) and last salary drawn by the workman was about Rs.10,374/- per month. The workman was performing his duty honestly and sincerely and there was no complaint against the job.

3. It is the case of the claimant, it was alleged that on 03/08/2014 the management terminated the services of the workman without prior intimation and assigning any reason, on the pretext that on 03/08/2014 the Claimant was not present on its duty and his attendance was marked. In fact that the workman was very much present in the establishment. The claimant requested the management to pay his earned salary and for reinstatement in job, but of no use. Thereafter demand notice was served upon the management but management did not file reply thereto. The claimant has misplaced the copy of demand notice alongwith postal receipts some where and the claimant undertakes to produce the same when the same will be traceable. Finally a prayer has been made by the Claimant/Workman for reinstatement with all consequential relief, alongwith full back wages and earned salary, in tems of the reference.

4. The management contested the claim of claimant by filing Written Statement. And management raise some preliminary objections and has admitted the factum of engagement of claimant on 01/02/2012 as Direct Sales Man and his last salary was Rs. 10,374/-. It is further alleged that on 03/08/2014 the claimant was assigned to perform the duty in “C” Shift from 4.8.2014 the claimant connivance with manager marked his presence but he was actually found absent from assigned duty hrs. Thus Show Cause Notice dated 08/08/2014 was issued to the claimant calling upon him to furnish an explanation. The management sent reminders vide letters dated 29.10.2014, 30.10.2014 & 12.11.2014 respectively, whereby the claimant was advised to report for duty. However no communication was received from claimant, he is guilty of unauthorized absenteeism w.e.f 04.08.2014. The management has other averments of Statement of Claim.

5. Today the matter was listed for appearance of the Claimant who did not appear on even on previous date of hearing i.e. 28.11.2016. Even today the claimant is not present. This clearly shows that the claimant is not interested in adjudication of the reference on merits. As such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: January 19, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 34/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/07/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2017

S.O. 334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 06.02.2017.

[No. L-12012/07/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D.Act.1947

Ref. No. 34 of 2014

Employer in relation to the management of UCO Bank, Deoghar .

AND

Their workman.

Present : Shri R.K.Saran, Presiding Officer

Appearances :

For the employers : Shri B.P.Bhattacharjee, Cheif Manager

For the Workman : Shri B.Prasad, Rep.

State : Jharkhand

Industry : Banking

Dated 23/12/2016

AWARD

By order No. L-12012 /07/2014/IR (B-II) dt. 10.03.2014, the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of UCO Bank, Deoghar is not absorbing Sri Surendra Ramani in the service of Bank as peon is fair and justified? What relief the concerned workman is entitled?”

2. The case is received from the Ministry of Labour on 24.03.2014. After receipt of reference, both Parties are noticed, The Sponsoring Union files their written statement on 02.05.2014. The management files their written statement-cum-rejoinder on 19.08.2014.No witness examined from both side, and no document is also marked as exhibit.
3. The case of the workman is that the concerned workman was orally appointed to discharge the duties of a peon at Deoghar Branch from 10.06.1988.
4. After appointment, the workman used to discharge all duties of peon from 10. AM to 6 PM regularly and some times even beyond that as per the instruction of the Branch Manager and he was paid wages @ Rs. 30/- per day initially which was raised to Rs. 60/- per day and lastly Rs. 80/- per day through debit voucher.
5. It is further submitted by the workman that the management and the workman's union entered into a settlement at apex level on 12.09.89 in which daily rated workers who worked for 240 days during the last three years preceeding the settlement were to be empanelled for permanent absorption in the service of the Bank as Peon under subordinate Cadre. He worked up to March 1997. Hence the workman was entitled for his permanent absorption in the service of the Bank as Peon but his case was not considered and he was terminated from service of the bank in gross violation of the provision of I.D.Act 1947.
6. It is also submitted by the workman that the workman approached the Hon'ble High Court,Patna with other workman in which the Hon'ble High Court ordered that if the vacancies of class IV post is occur and if application is filed by the petitioner must be considered. But during the preceding years over 400 daily rated workman were permanently absorbed in the service of the Bank and about 100 personal drivers were regularised as peon but the case of the present workman is not considered. The workman represented to the management for considering his case for abosorption in the service of the Bank but without effect hence Industial dispute arose.
7. On the other hand, the case of the management is that the workman was engaged on daily wages without any advertisement and without following the due process of selection. Moreover the Branch Manager was not competent to engage any person on the post of water boy cum peon on daily wages it is further pertinent to mention here that workman has tried to mislead the Tribunal.
8. It is further submitted by the management that, in his writ application filed on his behalf vide CWJC No. 4115/1997 wherein it was categoracally stated o behalf of the workman that he was engaged as water boy com peon on daily wages by Branch Manager of the Bank and as such as per settlement dated 12.10.1989 Sri Surendra Ramani is not entitled for absorption because in the said settlement it has been clearly mentioned that those who have engaged as water boy on daily wage would not be eligible for being consider for absorption under this settlement. But the fact that the workman was engaged as water boy-cum-peon but he has been intentionally supressed and only peon has been mentioned in presenst reference.

9. The workman's case is that he was working as peon under the UCO Bank management for long years, but subsequently the bank management removed the workman from service. Hence this reference.

10. It is the admitted case that the workman was working as daily wager workman and subsequently messenger as per new Bank regulation and management removed the workman.

11. In this case the only direction can be given to the management to take him as daily wager, and subsequently taking workman his efficiency, regularise him relaxing norms. Direction of regularisation is not mandatory but taking as daily weger is mandatory and he be adjusted in any branch of their bank, and subsequently be regularise.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगोवा पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 9/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-36011/10/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2017

S.O. 335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mormugao Port Trust, and their workmen, received by the Central Government on 06.02.2017.

[No. L-36011/10/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer/Judge

REFERENCE NO. CGIT-2/9 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MORMUGAO PORT TRUST

The Chairman
Mormugao Port Trust
Mormugao Harbour
Goa- 403 803.

AND

THEIR WORKMEN

The General Secretary
Mormugao Port & Railway Workers Union
Zaiboon Apartment
Near Cine EI-Monte
Vasco-da-Gama
Goa- 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate

FOR THE WORKMAN : Mr. G. Vijaychandran, Advocate

Mumbai, dated the 30th day of December, 2016

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/10/2009-IR (B-II), dated 18.01.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of Mormugao Port & Railway Workers Union, Goa for payment of HRA to Class III & IV Employees of Mormugao Port, Goa at the revised rates from class ‘C’ to class B-1 w.e.f. 1/4/2004 is legal, proper and justified. What relief these employees are entitled and from which date? What are other directions necessary in the matter?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice the second party Union filed their Statement of Claim at Ex-12. According to second party Union Goa being re-classified as a B-1 Class city, second party /Union requested party no 1/ employer, vide their letter no MPRWU/2004/G.188 DT. 5/2/2004 that necessary orders be passed entitling the employees of MPT to draw HRA @ 17.5% of actual Basic pay and port Allowance @ 2000/- p.m. instead of Rs 100/ p.m. It is their contention that the Govt. of India thorough its Under Secretary placed the matter vide office memorandum no. 2(3)/E II (B)/04 dt. 1/3/2004 to Ministry of Finance, Department of Expenditure, also recorded the revision of classification of Goa from the existing ‘C’ class to ‘B-1’ class for the purposes of payment of HRA to the Central Government employees to take effect from 1/4/2004. The matter was accordingly referred by the party 1/ employers to the Indian Ports Association vide their letter no. GAD/Pc-B/PC B/3(24)/2004/P-191 dt 17/7/2004. The employer vide their letter GAD/PC B/1/ (18)/2004/2010 dt 10/8/2004, accordingly intimated the workmen/ union of such reference. The employer also informed to Officer’s Association that enhancement of HRA and payment of CCA pursuant to the re-classification of Goa as Class B-1 city was referred to Indian Ports Association to be taken up with the Ministry of Shipping as it was not a local issue. The Indian Ports Association placed the matter before the Ministry of Shipping and informed the interested parties that further follow up may be done directly with the Ministry of Shipping. In the meanwhile the party no.2/ workmen served a strike notice dt 8/11/2004 proposing to go on an indefinite strike on or after 8/12/2004 over the demands of PLI/PLR and HRA and the conciliation efforts having failed the ALC (c) Vasco-da-Gama, Goa sent his report to the Secretary, Ministry of Labour, Government of India, New Delhi indicating the Union’s willingness to refer the matter for arbitration. Ministry of Labour did not however consider the matter of HRA fit for adjudication at this stage as the demand was under consideration by the Ministry of Shipping and hence premature as far as adjudication by the Tribunal was concerned. In the meanwhile, the Mormugao Port Officers’ Association had discussions with the Secretary (Shipping) and the Joint Secretary (Ports), Ministry of Shipping Government of India during their visit to the Port for pressing the demand for revision of HRA on the basis of reclassification of Goa as B-1 from ‘C’ Class and their HRA was revised to 15% (in place of existing 7.5%) p.m. of the Basic pays plus city compensatory allowance @ 180/- p.m. w.e.f. 1/1/2004. However despite pursuing the matter with Party no.1/ employer and the Ministry of Shipping no decision was taken in respect of the genuine demands of Class III & IV employees represented by the party no.2/workmen. The Ministry of Labour having regard to the fact that no decision was taken by the Ministry of Shipping has now referred the matter for adjudication before this Tribunal.

3. It is contention of second party workmen that there is no justification in not extending the benefit of re-classification of Goa from “C” class city to “B-1” class city in respect of Class III & IV employees whereas the same has been extended on the basis of the same Memorandum dt 1/3/2004 of the Government of India which is stated to be in respect of Central Government employees to Class I & II Officers of party no.1/ employer. The employer had informed that their claim was referred to Indian Ports Association to be taken up with the Ministry of Shipping as it was not a local issue. It is thus contention of second party workmen that as per Clause 12.2 of the Wage Revision Settlement, the Port employees can opt for Central Govt. rates of HRA and therefore seek that their HRA and CCA be fixed in accordance with Office Memorandum no.2 (3)/E II B/04 dated 1/3/2004 of Govt. of India HRA @ 15% of the actual Basic pay and CCA as admissible as has been extended to the Class I & II Officers. Since the conciliation failed, the Ministry of Labour has referred the dispute to this Tribunal.

4. First party employer filed Written Statement at Ex-19 and opposed the claim on the ground that as regards the demand of payment of HRA at revised rate, the matter is under consideration by the Ministry of Shipping. Therefore, it is considered pre-mature to refer the claim for adjudication. It is contended that since the Ministry of Shipping has not taken any decision to extend the benefit to employees of the MPT, the Government has referred the issue for adjudication. The payment of enhanced rate of HRA to the employees is a policy decision of the Central Government and since the Shipping Ministry has not taken any decision to extend the benefits of re-classification of Goa as B-1 city from “C” class city, enhanced HRA was not paid to the employees. Issue is pending with the Shipping Ministry. Till the time it is decided by the Shipping Ministry the workmen are not entitled to enhanced HRA. On these grounds employer has sought the rejection of the Reference.

5. Following issues are framed at Ex-20. I reproduce the issues for my determinations along-with the findings thereon for reasons to follow:

Sl. No	Issues	Findings
1.	Whether the workmen under reference are entitled to HRA at the revised rate from Class C to Class B-1 w.e.f. 1/4/2004?	No.
2.	What relief the workmen are entitled to?	As per order
3.	What order?	As per order.

REASONS

Issue No. 1:

6. Parties have not adduced oral evidence so far contention goes, it is main contention of workmen that admittedly Union of India in its Budget of 2004 has elevated Goa as a Class B-1 city from Class-C for computing the HRA allowance for the employees and the matter was taken up before MPT and Ministry of Shipping as well as Indian Port Association. It is main contention of workmen that Indian port association had recommended and the employer MPT also supported the case of the workmen that HRA to the employees of MPT should be given in terms of recommendations of 7th Pay Commission. Even the employer of first party extended the benefit of enhanced HRA to its Officers. In view of that it is a case of workmen that this anomaly be removed by giving benefits of enhanced HRA to Class 3 and Class 4 employees.

7. Ld Counsel for management vehemently argued that HRA is paid to the Officers and Employees based on wage revision settlement of Officers and Employees respectively. The rates of HRA is calculated by Ministry of Finance based on different rates specified on the basis of classification of cities by Government of India and wage settlement of Officers and employees of Port. As per the Finance Ministry's OM No. 2(30)/97-E-11 (B) dt 3/10/1997 Goa was classified as Class 'C' with the rate of HRA applicable @ 7.5% of actual basic pay drawn and for cities classified as A to B-2 and A-1, the applicable HRA was @ 15% and @ 30% respectively. Therefore all the Central Government Goa Employees including Officers posted in Goa, were eligible for HRA @ 7.5%.

8. It is matter of record that there is provision in the Wage Revision Settlement effective from 1/1/1997 of employees under clause 12.2 that HRA payable to Government employees will also be available to Port Employees. Similar provision revising HRA rates also exist for Officers in wage Revision Settlement effective from 1/1/1992 and this practice is continued under para 5.1 of the Wage Revision of Officers effective from 1/1/1997. In case of both employees and Officers, under the Wage Revision, there is a proviso that HRA applicable to Government employees will also be available to port Employees/ Officers. But then officers were allowed HRA @ 7.5% whereas Class III & IV employees were allowed to draw HRA up to 15 % of basic pay which was more than 7.5% to which Central Government employees in Goa were entitled, as Goa was re-classified as Class 'C' under the Ministry of Finance order dated 3.10.1997. Though HRA for class III & IV employees was supposed to be 7.5 % based on re-classification of Goa as Class 'C', as the above order of Finance Ministry on par with officers of Port, Class II & IV employees were paid 15%, based on negotiations during the wages revision with the Labour Federation.

9. In view of that the submission is that Class III & IV employees were already drawing 15% i.e. maximum HRA for which Central Govt. Employees posted in Goa were entitled, under MoF consequent to re-classification of Goa from Class C to B-2 and hence no benefit over and above 15% of HRA could have been considered to Class- III & IV employees, without revision of the same under wage settlement or approval of Ministry of Shipping. In view of that the submission is that since the matter was submitted before MoS (Ministry of Shipping) through IPA for approval vide letter No. GAD/Pc-B/3 (24) 2004/ P-191 dt 17/7/2004 and letter of IPA to MoS vide Ref No. IPA/Md/BWNC/2003 (Vol-III) dt. 4/8/2004 and the approval of Ministry on the matter is still awaited, the claim itself is premature. The claim of the Officers for enhancing HRA from 7.5% to 15% was considered and approved as it was permissible to raise HRA up to 15% within the ambit of MoF (Ministry of Finance) Order dt 3/10/1997 for enhance in the HRA as claimed by them. As such the approval of HRA at revised rate the matter is under consideration by the Ministry of Shipping. Since no such approval is given by Ministry of Shipping and issue is pending in the Shipping Ministry till the time it is decided by the Ministry of Shipping. Since the matter is before Ministry of Shipping for consideration for necessary approval, I find that the Claim of workmen is premature and in absence of any approval from Ministry of Shipping, they were not entitled to HRA at the revised rate from Class 'C' to Class 'B-1' w.e.f. 1/4/2004 as claimed by them. Issue no. 1 is answered accordingly in negative.

Issues nos. 2 & 3:

10. In view of finding on issue No. 1 the workmen are not entitled to any relief as claimed by them. Reference is liable to be rejected.

11. In the result, I pass following order:

ORDER

Reference is rejected with no order as to costs.

Date: 30.12.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 19/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/103/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2017

S.O. 336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 06.02.2017.

[No. L-12011/103/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 19/ 2015

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. एल-12011/103/2014-आईआर (बी-II) दिनांक 27/02/2014

अध्यक्ष,

अखिल राजस्थान बैंक सफाई कर्मचारी कांग्रेस,

मकान नं. 40, चांवरिया मार्ग,

नाहरगढ़ किले के नीचे,

जयपुर — (राजस्थान)

बनाम

उप महाप्रबन्धक, यूको बैंक,

अंचल कार्यालय, आर्कैड इंटरनेशनल,

सिविल लाइंस, अजमेर रोड,

जयपुर।

प्रार्थी की तरफ से : श्री महेन्द्र कुमार चौहान — एडवोकेट

अप्रार्थी की तरफ से : श्री सुरेन्द्र सिंह — एडवोकेट

: पंचाट :

दिनांक : 28. 12. 2016

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 की उपधारा 1 के खण्ड (घ) के अन्तर्गत दिनांक 27. 02.2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-
2. "क्या प्रबन्धन यूको बैंक, अंचल कार्यालय, जयपुर के द्वारा कर्मकार सूरजमल एवं 62 अन्य (सूची अनुलग्न "ए" के साथ संलग्न है) सफाई कर्मकारों को पूर्णकालीन नियुक्ति नहीं दिया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो सफाई कर्मकार किस अनुतोष को पाने के अधिकारी है?
3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी का कथन है कि प्रार्थी बैंकों में सफाई कर्मचारियों की यूनियन है जो कि बैंकों में कार्यरत सफाई कर्मचारियों की हितों की रक्षा के लिए समय-समय पर सरकार एवं बैंक प्रबन्धन का ध्यान ज्ञापन के माध्यम से आकर्षित करती रहती है।
4. यूको बैंक के तीनों रीजन जयपुर, अजमेर व जोधपुर में कार्यरत सफाई कर्मचारियों को 25-30 वर्ष तक कार्य करने के बाद भी उन्हें पूर्णकालिक नियुक्तियां नहीं दिये जाने तथा अप्रार्थी द्वारा उनके व्यक्तिगत वाहन चालकों को पूर्णकालिक नियुक्ति दे देने के संदर्भ में प्रार्थी द्वारा क्षेत्रीय श्रम आयुक्त, केन्द्रीय एवं समझौता अधिकारी जयपुर के समक्ष मांग पत्र दिया गया। अप्रार्थी द्वारा 28 अप्रैल 2013 को गुपचुप तरीके से बिना किसी विज्ञप्ति के भर्ती किये जाने के विरुद्ध प्रार्थी ने दिनांक 18.8.12 को एक पत्र लिखा, लेकिन अप्रार्थी द्वारा उसका कोई जवाब नहीं दिया गया। इसके बाद पुनः प्रार्थी ने दिनांक 24.9.2012 को एक पत्र अप्रार्थी को लिखा, लेकिन अप्रार्थी ने प्रार्थी के दोनों पत्रों का कोई जवाब नहीं दिया।
5. भारत सरकार एवं वित्त मन्त्रालय द्वारा बैंकों में कार्यरत सफाई कर्मचारियों के लिए जो नियम बनाये गये हैं उनका विपक्ष द्वारा पालन नहीं किया जा रहा है तथा श्रम विभाग के नियमों की अवहेलना की जा रही है।
6. जयपुर, अजमेर और जोधपुर रीजन में कार्यरत सफाई कर्मचारियों को उनके द्वारा 25-30 वर्ष तक कार्य करने पर भी उन्हें पूर्णकालिक नियुक्ति नहीं दिये जाने पर प्रार्थी ने अप्रार्थी से उन्हें पूर्णकालिक नियुक्ति दिये जाने की मांग की, लेकिन प्रार्थी के मांग पत्र पर अप्रार्थी ने कोई सहानुभूतिपूर्वक कार्यवाही नहीं की। राष्ट्रीय अनुसूचित जनजाति आयोग व राष्ट्रीय सफाई कर्मचारी आयोग के अध्यक्षों ने यूको बैंक के प्रधान कार्यालय का दौरा करके समस्त बैंकों में कार्यरत सफाई कर्मचारियों को पूर्णकालिक नियुक्ति देने के निर्देश बैंक प्रबन्धन को दी हैं, लेकिन इसके बाद भी अप्रार्थी ने सफाई कर्मचारियों को पूर्णकालिक पदों पर नियुक्ति नहीं दी ना ही चपरासी के पद पर प्रोन्नती दी। प्रार्थी व अप्रार्थी के मध्य क्षेत्रीय श्रम आयुक्त के समक्ष असफल सुलह वार्ता आख्या पर भारत सरकार श्रम मन्त्रालय ने उक्त विवाद न्यायनिर्णयन हेतु प्रेषित किया है।
7. प्रार्थी ने सफाई कर्मचारियों की एक सूची अप्रार्थी तथा क्षेत्रीय श्रम आयुक्त, केन्द्रीय एवं समझौता अधिकारी जयपुर के समक्ष पेश की जिसमें दर्शित सफाई कर्मचारी लगभग 20-25 वर्ष से कार्य कर रहे थे जिन्हें पूर्णकालिक नियुक्तियां नहीं दी गई।
8. अप्रार्थी ने एक सितम्बर 2015 से सभी पार्टटाईम सफाई कर्मचारियों को फूल टाईम हाउस कीपर कम पिओन बनाने के आदेश दिए, लेकिन सफाई कर्मचारियों को निम्न भत्ते व स्केल में कोई परिवर्तन नहीं किये और ना ही उन्हें लाभ दिए हैं जिसका विवरण निम्नवत् है :-
 - अ. सफाई कर्मचारी 1.1.90 से जिस स्केल में हैं उन्हें वही पर रखे हुए हैं, उनका वेतन नहीं बढ़ाया गया है जबकि 2008 में व्यक्तिगत वाहन चालकों को बैंक प्रबन्धक ने परमानेन्ट कर सफाई कर्मचारियों से ज्यादा वेतन दिए हैं।
 - ब. गवर्नमेन्ट ऑफ इण्डिया मिनिस्ट्री ऑफ फाइनेन्स ने 1990 में सफाई कर्मचारियों को 5 साल की सर्विस के बाद उनको पिओन में कन्वर्ट करने के आदेश बैंकों को दिए थे परन्तु उन आदेशों के अधीन भी सफाई कर्मचारी पिओन नहीं बनाये गये हैं। सन् 2006 में सफाई कर्मचारियों को 10 वर्ष के बाद पिओन बनाने का सर्कुलर संख्या सी.एच. ओ./एच.आर.डी./2005/2006-07, दिनांक 9.8.2006 जारी किया गया है, इसका भी बैंक प्रबन्धन पालन नहीं कर रहा है। सफाई कर्मचारियों की ग्रेच्यूटी, पेंशन तथा पूर्ण लाभ भी तय किया जाय।
 - स. अन्य अनुतोष जिसे न्यायाधिकरण उचित समझे उसे दिलाये जाने का आदेश प्रदान किया जाय।
9. विपक्षी की तरफ से याची की स्टेटमेन्ट ऑफ क्लेम के विरुद्ध प्रस्तुत वादोत्तर की प्रारम्भिक आपत्ति में कहा गया है कि केन्द्रीय सरकार, श्रम मन्त्रालय द्वारा न्यायाधिकरण को विवाद न्याय निर्णयार्थ प्रेषित किया गया है, जिसका विवाद बिन्दु यह है कि "कर्मकार सूरजमल एवं 62 अन्य सफाई कर्मकारों को पूर्णकालीन नियुक्ति नहीं दी गयी।" परन्तु अप्रार्थी संस्थान द्वारा पूर्व में ही सूरजमल एवं 62 अन्य सफाई कर्मकारों को पूर्णकालीन नियुक्ति नियमानुसार दी जा चुकी है जिसका दस्तावेज प्रदर्श-एम-एक संलग्न है। प्रार्थीगण द्वारा प्रस्तुत प्रकरण निरर्थक, आधारहीन होने के कारण प्रथम दृष्ट्या खारिज किये जाने योग्य है।
10. प्रार्थीगणों द्वारा प्रस्तुत क्लेम में संदर्भ से भिन्न अप्रासंगिक तथ्यों का उल्लेख करके प्रार्थना पत्र प्रस्तुत किया गया है। जो विवाद-बिन्दु रिफरेन्स में उल्लेखित किया गया है, माननीय न्यायाधिकरण को उस विवाद- बिन्दु /संदर्भ के सिवाय अन्य किसी तथ्य या आधार को सुनने का श्रवणाधिकार एवं क्षेत्राधिकार प्राप्त नहीं है, अतः प्रार्थीगणों द्वारा प्रस्तुत प्रकरण अप्रासंगिक तथ्यों पर आधारित होने के कारण प्रथम दृष्ट्या खारिज किया जाय।

11. विपक्षी की तरफ से वादोत्तर में कहा गया है कि याचिका के पैरा एक में उल्लेख जिस प्रकार से वर्णित है स्वीकार नहीं है। मदान्तर्गत उल्लेख कि प्रार्थी यूनियन बैंकों में कार्यरत सफाई कर्मचारियों की नियमानुसार रजिस्टर्ड यूनियन है, इस तथ्य को साबित करने का भार स्वयं प्रार्थी यूनियन पर है जिसे वह सक्षम साक्ष्य एवं प्रमाणित दस्तावेजों द्वारा साबित करें।
12. प्रार्थी द्वारा प्रस्तुत क्लेम के पैरा दो में उल्लेख जिस प्रकार से वर्णित है स्वीकार नहीं है। माननीय समझौता अधिकारी के समक्ष प्रार्थीपक्ष द्वारा प्रार्थना पत्र प्रस्तुत किया गया था, यह तथ्य स्वीकार है परन्तु प्रार्थीपक्ष द्वारा की गई अनैतिक एवं निरर्थक मांग के चलते समझौता वार्ता असफल रही थी। श्री सुरजमल एवं अन्य 62 सफाई कर्मचारियों को पूर्णकालिक नियुक्ति नियमानुसार पूर्व में ही दी जा चुकी है। अप्रार्थी संस्थान एक राष्ट्रीयकृत बैंक संस्थान है जिसमें कर्मकारों की नियुक्ति सम्बन्धी एवं पूर्णकालिक नियुक्ति सम्बन्धी नियम एवं प्रावधान स्थापित है। अप्रार्थी संस्थान द्वारा प्रार्थीगणों तथा अन्य किन्हीं व्यक्तियों की पूर्णकालिक नियुक्तियां विपक्षी संस्थान में स्थापित नियमों एवं प्राविधानों के विपरीत नहीं की गयी है। याचीगण की पूर्णकालिक नियुक्ति से सम्बन्धित परिपत्र CHO/PAS/08/ 2015-16 date 01-09-2015 प्रदर्श एम-2 संलग्न है, अतः प्रार्थीपक्ष का यह कथन गलत है कि प्रार्थीगण के अतिरिक्त निजीवाहन चालकों को पूर्णकालिक नियुक्तियां दी गयी है। यह भी कहा गया है कि यह उल्लेख करना प्रासंगिक है कि प्रार्थीपक्ष द्वारा किसी वाहन चालक के नाम का उल्लेख नहीं किया गया है जिसे पूर्णकालिक नियुक्ति नियम एवं प्रावधानों के विपरीत की गई है। अप्रार्थी संस्थान द्वारा कभी भी कोई भर्ती गुपचुप एवं नियम विरुद्ध नहीं की गयी है। आगे कथन है कि प्रार्थीपक्ष द्वारा उल्लेख किया गया है कि दिनांक 28.04.2013 को गुपचुप की जा रही भर्ती के सम्बन्ध में प्रार्थीपक्ष द्वारा लगभग छः माह पूर्व ही दिनांक 18.8.2012 एवं दिनांक 24.9.2012 को अप्रार्थी संस्थान को पत्र प्रेषित किया गया था। यहां पर यह उल्लेख करना आवश्यक है कि उक्त तथ्य प्रस्तुत प्रकरण के संदर्भ में प्रासंगिक तथ्य नहीं है। यहां पर यह भी उल्लेख करना प्रासंगिक है कि जिस कथित भर्ती की प्रार्थीगण को पूर्व में सूचना थी और उन्होंने उसके सम्बन्ध में अप्रार्थी संस्थान को छः माह पूर्व ही पत्र प्रेषित किया था तो उक्त कथित भर्ती गुपचुप कैसे हो सकती है? अगर उक्त कथित भर्ती अप्रार्थी संस्थान के नियम एवं प्रावधानों के विपरीत थी तो प्रार्थीगण को माननीय उच्च न्यायालय में रिट याचिका दायर कर उसे रोकवाना चाहिए था। परन्तु प्रार्थीगणों द्वारा ऐसा कुछ नहीं किया गया जिससे यह स्वतः स्पष्ट है कि प्रार्थीगणों गुपचुप नियुक्ति का कथन बिल्कुल झूठा एवं आधारहीन है। अतः प्रार्थीगणों द्वारा प्रस्तुत प्रकरण संदर्भ के विपरीत अप्रासंगिक तथ्यों को आधार बनाकर प्रस्तुत किया गया है जो खारिज किये जाने योग्य है।
13. याचिका के प्रस्तर तीन के कथन को अस्वीकार किया गया है।
14. याचिका के प्रस्तर चार के कथन को अस्वीकार करते हुए यह कहा गया है कि याचीगण को पूर्णकालिक नियुक्ति दी जा चुकी है एवं प्रस्तर चार में चपरासी के पदों पर प्रोन्नति से सम्बन्धित उल्लेख प्रसंगहीन है इसलिए चपरासी के पदों पर प्रोन्नति न देने के कथन के विरुद्ध किसी जवाब की आवश्यकता नहीं है। समझौता वार्ता असफल होने के कारण प्रार्थी पक्ष की अनैतिक एवं निरर्थक मांग को बताया गया है।
15. याचिका के प्रस्तर पांच के कथन को अस्वीकार कर यह कहा गया है कि प्रार्थी पक्ष के प्रार्थना पत्र का जवाब समझौता अधिकारी के समक्ष दिया गया था एवं पुनः इस सम्बन्ध में जवाब देने की आवश्यकता नहीं है।
16. याचिका के प्रस्तर छः के कथन को अस्वीकार कर कहा गया है कि पूर्व में ही याचित अनुतोष दिया जा चुका है। प्रार्थीगण सुरजमल एवं अन्य 62 सफाई कर्मचारियों को पहले ही पूर्णकालिक नियुक्ति दी जा चुकी है तथा न्यायनिर्णयन हेतु प्रेषित रिफरेन्स का याचीगण की प्रस्तर छः में याचित अनुतोष से कोई सम्बन्ध नहीं है। यह भी कहा गया है कि चूंकि याचित अनुतोष दिया जा चुका है अतः याचिका खारिज की जाय।
17. उल्लेखनिय है कि विपक्ष प्रस्तुत स्टेटमेंट ऑफ क्लेम का जवाब दिनांकित 4.7.16 याचीपक्ष ने दिनांक 4.7.16 को प्राप्त किया और दिनांक 15.9.16 को पत्रावली याची पक्ष की रिज्वायन्डर तथा दस्तावेज के लिये नियत की गयी। दिनांक 15.9.16 को याची पक्ष अनुपस्थित रहा। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये जिन्होंने मामले को निस्तारणार्थ लोक अदालत में नियत करने का अनुरोध किया। दिनांक 28.9.16 को पत्रावली याची के रिज्वायन्डर एवं अभिलेख तथा सुलह वार्ता हेतु नियत की गयी। दिनांक 28.9.16 को उभयपक्ष के विद्वान प्रतिनिधि ने पत्रावली को 29.9.16 को लोक अदालत में निस्तारण हेतु नियत करने की सहमति व्यक्त की जिसके आधार पर पत्रावली दिनांक 19.9.16 को लोक अदालत में निस्तारण हेतु नियत की गयी।
18. दिनांक 28.9.16 को लोक अदालत में उभयपक्ष के विद्वान प्रतिनिधि तथा यूनियन के महासचिव श्री गोपाल चॉवरिया उपस्थित आये परन्तु सुलह पर सहमति नहीं बनी। याची पक्ष ने सुलह पर विचारार्थ एक और तिथि चाही अतः 20.10.16 तिथि याची पक्ष के रिज्वायन्डर एवं अभिलेख/सुलह हेतु नियत की गयी। दिनांक 20.10.16 को पत्रावली पुनः उभयपक्ष के विद्वान प्रतिनिधि की सहमति से दिनांक 27.10.16 को निस्तारण हेतु लोक अदालत में रखी गयी। दिनांक 27.10.16 को याची पक्ष की तरफ से लोक अदालत में कोई उपस्थित नहीं आया। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये। अतः उक्त स्थिति में पत्रावली दिनांक 8.11.16 को पुनः याची पक्ष द्वारा रिज्वायन्डर एवं अभिलेख प्रस्तुत करने एवं सुलह हेतु नियत की गयी।
19. दिनांक 8.11.16 को भी याची पक्ष उपस्थित नहीं आया। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये, अतः प्रार्थी पक्ष को न्यायहित में अवसर प्रदान करते हुए दिनांक 23.11.16 को पत्रावली याची की रिज्वायन्डर एवं दस्तावेज हेतु नियत की गयी। दिनांक 23.11.16 को याची पक्ष पुनः न उपस्थित आया न रिज्वायन्डर एवं अभिलेख प्रस्तुत किया। याची पक्ष के निरन्तर उपस्थित न आने, रिज्वायन्डर तथा अभिलेख प्रस्तुत न करने, तथा यह महसूस करने के बाद कि याची को मामले को आगे चलाने में रुचि नहीं है, याची द्वारा रिज्वायन्डर एवं अभिलेख प्रस्तुत करने का अवसर समाप्त किया गया परन्तु आगे की कार्यवाही समाप्त करने के बजाय प्रार्थी को साक्ष्य प्रस्तुत करने का अवसर देते हुए अगली तिथि दिनांक 5.12.16 नियत की गयी। दिनांक 5.12.16 को भी प्रार्थी पक्ष उपस्थित नहीं आया विपक्ष के विद्वान प्रतिनिधि उपस्थित आये जिन्होंने बताया कि याचीगण/कर्मचारियों के प्रशिक्षण में होने के कारण याचीपक्ष के विद्वान प्रतिनिधि ने दूसरी तारीख चाही है। विपक्ष के विद्वान प्रतिनिधि की याचीपक्ष के

विद्वान प्रतिनिधि से फोन पर उक्त वार्ता के आधार पर न्यायाधिकरण द्वारा पुनः न्यायहित में कार्यवाही मुलतवी की गयी तथा याचीपक्ष के साक्ष्य हेतु अगली तिथि 19.12.16 नियत की गयी।

20. दिनांक 19.12.16 को याचीपक्ष की तरफ से न कोई उपस्थित आया न साक्ष्य प्रस्तुत की गयी। विपक्षी के विद्वान प्रतिनिधि उपस्थित आये। याचीपक्ष की विपक्ष द्वारा वादोत्तर प्रस्तुति के बाद से आगे की कार्यवाही में निरन्तर उदासीनता के कारण याची का साक्ष्य का अवसर समाप्त किया गया और विपक्ष द्वारा याची के साक्ष्य के अभाव में अपना साक्ष्य न प्रस्तुत करने के कथन पर याची पक्ष का साक्ष्य भी समाप्त किया गया। पत्रावली बहस के लिये दिनांक 26.12.16 को नियत की गयी।

21. मैंने विपक्षी के विद्वान प्रतिनिधि की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया। याची पक्ष की तरफ से बहस के समय भी कोई उपस्थित नहीं आया।

22. विपक्ष के विद्वान प्रतिनिधि ने बहस की है कि न्यायनिर्णयन हेतु प्रेषित रिफरेन्स के अनुसार याचीपक्ष ने जो अनुतोष चाहा है उसे विपक्ष द्वारा पूर्णरूप से प्रदान कर दिया गया तथा इसका उल्लेख जवाब-दावा में भी किया गया है एवं जवाबदावा की प्रति याची पक्ष को दिनांक 4.7.16 को ही प्राप्त है। इसके बाद याचीपक्ष ने रिज्वायन्डर के माध्यम से विपक्ष के कथन के विरुद्ध कोई कथन भी आज तक नहीं प्रस्तुत किया है और न ही मामले को आगे चलाने में कोई रुचि दिखायी है अतः प्रार्थी पक्ष का मामला फलहीन (Infructuous) मानते हुए खारिज किया जाय।

निष्कर्ष

23. याची पक्ष ने रिफरेन्स के अनुसार पूर्णकालिक नियुक्ति चाही है। विपक्ष के वादोत्तर से और विपक्ष द्वारा प्रस्तुत परिपत्र दिनांक 1.9.15 से यह जाहिर है याचीगण को पूर्णकालिक नियुक्ति दी जा चुकी है जो दिनांक 1.9.15 से प्रभावी है। याची पक्ष ने उक्त कथन के विरुद्ध कोई कथन नहीं प्रस्तुत किया है कि उन्हें याचित अनुतोष मिल चुका है अथवा नहीं मिला है। याचीपक्ष ने अपनी याचिका के समर्थन में कोई साक्ष्य भी नहीं प्रस्तुत किया है। याचीपक्ष का रिफरेन्स के अनुसार याचित अनुतोष प्राप्त हो गया है इस सम्बन्ध में उनकी तरफ से कोई स्वीकृति से सम्बन्धित साक्ष्य भी नहीं प्रस्तुत किया गया है अतः विधिक रूप से यह नहीं कहा जाता सकता है कि याचिका फलहीन (Infructuous) हो गयी है। याची पक्ष ने साक्ष्य प्रस्तुत कर याचिका कथन को सिद्ध नहीं किया है जिसे प्रथम दृष्टया साक्ष्य प्रस्तुत कर सिद्ध करने का भार याची पक्ष पर है। अतः मैं इस निष्कर्ष पर हूँ कि याचीपक्ष यह सिद्ध करने में असफल है कि प्रबन्धन यूकों बैंक, अन्चल कार्यालय, जयपुर द्वारा कर्मकार सुरजमल एवं अन्य 62 सफाई कर्मचारियों को जिनकी सूची रिफरेन्स के साथ संलग्न है, उन्हें पूर्णकालिक नियुक्ति न देना न्यायोचित एवं न्यायसंगत नहीं है। याचीगण तदनुसार याचित अनुतोष पाने के हकदार नहीं है। याचिगण की याचिका तदनुसार खारिज की जाती है। मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रिफरेन्स का उत्तर तदनुसार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 6 फरवरी, 2017

का.आ. 337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगोवा पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 29/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-36011/1/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2017

S.O. 337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mormugao Port Trust, and their workmen, received by the Central Government on 06.02.2017.

[No. L-36011/1/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/29 of 2008

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MORMUGAO PORT TRUST**

The Chairman
Mormugao Port Trust
Mormugao Harbour
Headland Sada
Goa - 403804.

AND

THEIR WORKMEN

The General Secretary
Goa Port & Dock Workers' Organisation
Shetye Sankul, 3rd Floor,
Tisk - Ponda
Goa.

APPEARANCES :

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMAN : Mr. P. Gaonkar, Representative

Mumbai, the 6th January 2017

AWARD

1. Government of India Ministry of Labour and Employment vide its order No L-36011/1/2008- IR(B-II) dated 15/05/2008 in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 have referred the following Industrial dispute to this Tribunal for adjudication.

“Whether the action of the management of Mormugao Port Trust, Goa. in not granting HRA rates as applicable to Government employees @ 15% of actual Basic Pay without any ceiling limit is legal and justified? If not, to what relief the workmen are entitled for?”

2. After receipt of the Reference, notices were issued to both the parties. In response to the notice the second party workmen filed statement of claim. According to second party workmen the Clause 3 and Clause 4, employees working in the ports are covered under the Bipartite Settlement signed by the Bipartite Wages Negotiations Committee constituted by the Government of India, in the Ministry of Surface Transport and their wages were revised as per the said settlement. After the expiry of settlement dated 6.12.1994, the Government of India in the Ministry of Surface Transport constituted the Bipartite Wages Negotiations Committee vide Ministry's order No. LB-12011/3/97-R.O dated 5.6.1998 and after several rounds of negotiations of settlement, wage settlement was signed w.e.f. 1.1.1997 for the period of 10 years. As a part of implementation the benefits of the said settlement was extended to the workers of Mormugao Port Trust. Clause 12 of the said settlement deal with the payment of House Rent Allowance. In clause 12.1, an employee who is not allotted accommodation by the Port Trust and the Labour Board will be paid House Rent Allowances at the following rates without production of receipt.

Name of Port	Existing Rate	Revised ceiling
Mumbai, JNPT	30% of actual Basic Pay	Rs.2100/-
Chennai, Calcutta (Exl. Haldia) Cochin	25% of actual Basic Pay	Rs.2000/-
Vishakhapatnam	17.5% of actual Basic Pay	Rs.2000/-
Mormugao, Kandla, New Mangalore, Tuticorin	15% of actual Basic Pay	Rs.1500/-
Paradip and Haldia	10% of actual Basic Pay	Rs.1000/-

3. According to second party workmen in accordance with Clause 12.2, HRA applicable to the Government employees will also be available to the Port employees. In accordance with Clause 12.3 of the said settlement every individual employee, therefore has the option to choose either of the two.

4. Accordingly with the terms of the said settlement, employees have opted for clause 12.2 and requested the employer to pay them HRA rate applicable to the Government employees. However, inspite of option of employees the employer refused to pay them HRA as per Government employees and hence employees through union raised the dispute before the Assistant Labour Commissioner [Central] Vasco-da-Gama Goa. Since the conciliation failed the Government has referred the dispute to this tribunal. The second party workmen are therefore asking to direct the employer to pay HRA without ceiling as per the option given to the employer.

5. The first party management resisted the claim by filing written statement at Ex.8. It is contended that as per the terms & conditions of employment, besides other terms are governed by wage revision settlement dated 2.8.2000 entered into between the major port trusts and 5 national federations of the port & dock employees. HRA is covered under the said revision settlement which is payable @ 15% of the actual basic pay subject to ceiling of Rs.1500/- per month. The HRA for the employees of Goa Government and the Central Government is 15% as there is no difference between HRA rates applicable to MPT and Government employees in Goa, option of HRA does not arise. It is submitted that as per clause 38 (II) of the wage settlement no fresh issue involving additional financial implication can be raised during the course of settlement in force and therefore the demand raised by the union is unjustified.

6. It is contended that as per the revised memorandum of settlement dated 2.8.2000, clause 12.1 employee who is not allotted accommodation by the port trust and dock labour board will be paid house rent allowance at the following rates without producing of rent receipt.

Name of Port	Existing Rate	Revised ceiling
Mumbai, JNPT	30% of actual Basic Pay	Rs.2100/-
Chennai, Calcutta (Exl. Haldia) Cochin	25% of actual Basic Pay	Rs.2000/-
Vishakhapatnam	17.5% of actual Basic Pay	Rs.2000/-
Mormugao, Kandla, New Mangalore, Tuticorin	15% of actual Basic Pay	Rs.1500/-
Paradip and Haldia	10% of actual Basic Pay	Rs.1000/-

7. It is then contended that every individual employee will have the option to choose either of two basic pay for the purpose of HRA shall not include any type of special pay or personal pay but includes stagnation increments. As per clause 12.2 HRA rates applicable to Government employees will be available to port employees. Since none of the employees has given option as required under clause 12.3 of the said settlement, they are not entitled to benefit as per clause 12.2 of the said settlement and therefore none of the employee are entitled to any relief.

8. Following are the issues for my consideration. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether members of second party union are entitled for HRA at par with Government employees @ 15% of actual basic pay ?	No.
2.	What relief in that case members of the union are entitled for ?	As per order below.
3.	What order	As per order below.

REASONS

Issue No.1

9. So far contention go, it seems to have been admitted position that class III & class IV employees working in the port are covered under the Bipartite settlement signed by the Bipartite Wages Negotiations Committee constituted by the Government of India in the Ministry of Surface Transport and their wages and allowances were revised as per the

said settlement. It also seems to have been admitted position that wage settlement was signed w.e.f. 1.9.97 for the period of 10 years and the benefits of said settlement were extended to the workers of Mormugao Port Trust Goa. It also seems to have been admitted position that as per clause 12 of the said settlement which deals with the payment of HRA an employee who is not allotted accommodation by the port trust and the labour board will be paid house rent allowance and so far Mormugao Kandla is concerned, the existing rate is 15% of the actual basic pay upto ceiling of Rs.1500/- per month.

10. As a matter of fact, in accordance with clause 12.2, HRA applicable to Government employees will also be applicable to port employees. In accordance with clause 12.3 of the said settlement, every individual employee therefore has option to choose either of the two. So now the question that creeps in is whether the workmen have given option opting HRA as per Central Government notification.

11. According to the management, none of the employees have submitted this option as required in clause 12.3 of the said settlement and therefore they are not entitled to benefit available under clause 12.2 of the said settlement. As against this, it is contention of the workmen that 40 employees have given the option through union vide letter dated 24.07.2006 which is at Ex.19 and they are entitled to HRA at the revised rate of 20% of basic as per the special orders issued by the Central Government for the purpose of HRA and CCA to the employees working in the state of Goa.

12. It is also a matter of record that vide special order, Government of India vide order No. G.I.M.F.O.M. No. 2(3)EII(B)/4 dated 1.3.04 revised the classification of state of Goa for the purpose of HRA at B1 class cities. So if the option is given by the employees then they are entitled to HRA as per special order of the Central Government dt. 1.3.04 which is at Ex.26. Now it is to be seen whether the option is given by the employees or not.

13. In this respect, if we see the evidence that has come on record, it is clear that all the employees have not given the option. Mr. Tutigaongar has admitted in his cross-examination that all the employees have not given the option. Dr. Jaywardhan Dhawale, Sr. Dy. Secretary has pleaded ignorance that 40 employees have given their option, we have document at Ex.19 i.e. the letter addressed to FA & CAO, Mormugao Port Trust Harbour mentioning therein that 40 applications have been received from port employees. But then we have no document to show that the workers have opted for HRA as per Government rates. In his cross-examination Shri Ruijudian who is witness of the union and who is member of the union has admitted that they are getting 15% of the basic pay subject to ceiling of Rs.1500/- as HRA and as per the clause 12.2 they are entitled to HRA as available to Government employees and it is subjected to giving option by the workmen of port trust. It is clear from his cross-examination that none of the workers have opted for HRA as per the Government rates since they are not knowing. It is admitted by him that benefit arising out of settlement was extended from 1.4.04 and since 1.1.07 they are getting HRA as per new settlement. Admittedly since 2007 they are getting HRA as applicable to central Government employees. In view of these admissions, it can be seen that no option was given by the employees in view of clause 12.3 of the said settlement and therefore they are not entitled to benefits available under clause 12.2 of the said settlement. In view of these, I find that employees / members of the second party union are not entitled for HRA at par with Government employees @ 15% of the actual basic pay. Issue No.1 is, therefore answered in negative accordingly.

Issue Nos. 2 & 3.

14. In view of my findings to Issue No.1 members of the union are not entitled to any relief and hence the reference is liable to be rejected.

ORDER

Reference is rejected with no order as to costs.

Date: 06.01.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 26/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/149/2002-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 26 of 2007) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/149/2002-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 26 of 2007

Employer in relation to the management of Kathara Washery, M/s. CCL

AND

Their workmen

Present : Shri R.K.Saran, Presiding Officer**Appearances :**

For the employers :- Shri D. K.Verma, Advocate

For the Workman :- Shri D.Mukherjee, Advocate

State :- Jharkhand

Industry :- Coal

Dated 22/12/2016

AWARD

By order No. L-20012 /149 /2002/IR (C-I) dt. 19.12.2006, the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of United coal workers Union for regularisation of services of Sri Sewa Chand Choudhary and 59 others as per annexure by the management of Kathara Washery, is legal and justified ? If yes, to what relief the workmen are entitled?”

Annexure**List of workman**

Sl. No.	Name	Father's Name	Address
1	Seva Chand Choudhri	Pusan Choudhri	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
2	Arbind Mahtha	Ramdhir Mahtha	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
3	Shankar Manjhi	Ratua Manjhi	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
4	Dhneswar Gop	Hari Gop	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
5	Budhan Gop	Sarju Gop	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
6	Dhaneshwar Manjhi	Mathur Manjhi	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
7	Hari Yadav	Late Kusun Yadav	Vill+Post-Ualgara, Thana- Petarwar, Dist –Bokaro
8	Aji Bullah	Mo Aasin	Vill- Jhirki, P.o- Saram,P.S- Gomiya, Dist-Bokaro
9	Madan Yadav	Rameshwar Yadav	Vill- Charvatand, P.o – Chanpi, P.S- Petarwar, Dist –Bokaro

10	Tulsi Mahto	Banshi Mahto	Vill+Post- Chanpi, Thana- Petarwar, Dist –Bokaro
11	Lakim Ansari	Ainul Ansari	Vill- Jhirkie , P.O- Saram, , Dist- Bokaro
12	Shikhan Rajwar	Bisun Rajwar	Vill +Post- Angwali , P.S- Petarwar, Dist –Bokaro
13	Causar Ansari	Makkhul Ansari	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
14	Arjun Yadav	Bhukhan Yadav	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
15	Naresh Rajwar	Bisun Rajwar	Vill +Post- Angwali , P.S- Petarwar, Dist –Bokaro
16	Gopal Yadav	Mudar Gop	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
17	Madan Karmali	Nandu Lal Karmali	Vill- Chotgadha, P.O- Rohar , P.S- Gomiya , Dist-Bokaro
18	Sanjay Kr. Rajwar	Hemant Rajwar	Vill +Post- Angwali , P.S- Petarwar, Dist –Bokaro
19	Keshwav Karmali	Dusath Karmali	Vill- Chotgadha, P.O- Rohar , P.S- Gomiya , Dist-Bokaro
20	Jitan Kumar	Sathu Kumar	Vill- Chotgadha, P.O- Rohar , P.S Gomiya , Dist-Bokaro
21	Daso Manjhi	Basudev Manjhi	Vill- Chotgadha, P.O- Rohar , P.S- Gomiya , Dist-Bokaro
22	Ritbaran Murmu	Lt. Somra Manjhi	Vill- Budhi Saray
23	Nuna Ram Hembram	Saroth Hembram	Vill+Post-Chnpi , Thana- Petarwar, Dist- Bokaro
24	Chitumuni Kumari	Birbal Turu	Vill- Jarkatand, P.O- Chanpi, P.S- Petarwar, Dist- Bokaro
25	Talo Devi	Lt. Bibu Das Manjhi	Vill –Ualgara, P.O- Manjhi, P.S- Petarwar, Dist- Bokaro
26	Nanki Kumari	Chatu Manjhi	Vill- Jarkatand , Post- Chanpi , Thana- Petarwar, Dist- Bokaro
27	Susheela Kumari	Duryodhan Soren	Vill+Post- Chanpi, Thana- Petarwar, Dist- Bokaro
28	Jiyaul Hak	Ainul Hak	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
29	Shankar Yadav	Budhan Yadav	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
30	Julpekar Ansari	Jahirudeen	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
31	Amit Kumar	Ravindr Kr. Singh	Vill- I.B.M. Kauloni, Post- Kathara, Dist- Bokaro
32	Md Imalmul Hak	Md Ainul hoda,	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
33	Ramchanra Manjhi	Lt. Matlu Manjhi	Vill- Pidhauriya
34	K. Ravichandran	Lt. Krishna	Vill- Bauth Cauloni, P.O- Kathara, Thana- Gomiya, Dist- Bokaro
35	Samiullah	Md Aasin	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
36	K. Ranju	Late K	Vill- Bauth Cauloni, P.O- Kathara, P.S- Gomiya, Dist- Bokaro
37	Manoj Kumar	B.D. Hajam,	Vill- Bauth Cauloni, Post- Kathara, Thana- Gomiya, Dist- Bokaro
38	Mo. Aabid Ansari	Mo Kalim Ansari	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
39	Rati Ram Hembram	Sarodha Hembram	Vill+Post- Chanpi, Thana- Gomiya, Dist- Bokaro
40	Suresh Yadav	Rameshwar Yadav	Vill- Gharwatand, Post- Chanpi, Dist- Bokaro
41	Murshid Aalam	Makbul Husan	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
42	Manjur Aalam	Rustam Ali	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro

43	Mohan Yadav	Rameshwar Yadav	Vill- Gharwatand, post- Chanpi, Thana- Petarwar, Dist- Bokaro
44	Ajay Kumar Singh	Nagendra PdSingh	Vill- Kathara, P.O- Kathara, P.S- Gomiya, Dist- Bokaro
45	K. Suresh Kumar	Late Krishna	Vill- Bauth Cauloni, P.O- Kathara, P.S- Gomiya, Dist- Bokaro
46	Sartaj Ansari	Mo Makbul Susain	Vill- Jhirki , P.O- Saram,P.S- Gomiya, Dist- Bokaro
47	Rajdev Kumar	Basudev Thakur	Vill- Bauth Cauloni, P.O- Kathara, P.S- Gomiya, Dist- Bokaro
48	Binod Kumar Singh	Girharee Singh	Vill- Mirjapur, P.O- Petarwar , P.S- Tetarwar, Dist- Bokaro
49	Mo Moin Ansaree	Mo Yunus	Vill- Lothi, Thana- Gomiya, Dist- Bokaro
50	Jamal Warish	Kalimullah	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
51	Nageshwar Kapardar	Late Mahanand Rajwar,	Vill +Post- Angwali , P.S- Petarwar, Dist –Bokaro
52	Kishor Kr. ShriVastav	C.P. Shri Vastav	Vill- Jarangdih, P.S- Jarangdih, Thana- Gomiya , Dist- Bokaro
53	Mahbuth	Husain	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
54	Jawahar Jayoti	Surendra Prasad Mandirwar,	Vill- Jarangdih , Post- jarangdeeh, Thana- Bokaro , Tharmal, Dist- Bokaro
55	Jakir Ansari	Shadat	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
56	Mo Jahid Ansari	Khtibullah	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
57	Saraphat Husain	Allaudeen	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro
58	Pankaj Kumar Singh	Krishna Murari Parasad	Vill- Kathara, Post- kithara, Dist- Bokaro
59	Suresh Singh	Ram Ujagar Singh	Vill- Kathara, P.O- kithara, P.S- Gomiya, Dist- Bokaro
60	Mo Smiullah Ansari	Mohib Ansari	Vill- Jhirki , P.O- Saram, P.S- Gomiya, Dist- Bokaro

2. The case is received from Ministry of Labour on 25.05.2007. The workman files written statement on 25.05.2007 but the management files their written statement on 09.07.2008. One witness examined from each side . No document marked by either side.

3. The case of the workmen is that Shri Sewa Chand Choudhary & 59 others have been working as permanent nature of jobs against permanent vacancy since last 12 years continuously as plant cleaning and also magnetite charging workman in kathara washery continuously under the direct control and supervision of the management within the precinct of the washery and engaged in execution of the jobs of the management which are absolutely essential for running the washery. But the management did not pay the concerned workman wages and benefits as per NCWA.

4. It is also submitted by the workman that the management camouflaged the status of the employee and to justify not paying the wages and other benefits as per NCWA, But the management has been paying their wages in the name of intermediaries i.e so-called contractor, and conceal the real issue and camouflaged the actual facts. The management prepared several papers and arranged documents to cheat them. The Union/workman represented before the management several times but without any effect hence present industrial dispute arose.

5. On the other hand the case of the management is that Shri sewa chand choudhary and 59 others were never engaged by the management of Kathara washery in any permanent and perennial nature of job. In fact, management of Kathara washery has its own regular workman for performing permanent nature of job including day to day cleaning even in the event of break down, electric failure etc.

6. However, the person concerned have never seen at work site of the management. The list of the workman submitted by the sponsoring union are stranger to the management .

7. It is also submitted by the management that the sponsoring union has collected the names of certain job seekers of the Area in and around Kathara washery and has made an attempt there entry into the company through litigation. Hence no employer –employee relationship exists between Shri Sewa Chand Choudhary and 59 others whose names mentioned in the annexure of the order and the management of Kathara washery.

8. It is further submitted by the management that the management of Kathara washery allotted some job to Sah Builders contractors for very few period after proper tender. In view of decision of Hon'ble Supreme Court in SAIL case a contractor worker is not entitled for regularization. Therefore the demand of the union is neither legal nor justified.

9. The short point to be decided in this reference is as to the workman concerned will be regularized under the management or not.

10. The present dispute before the ALC (C), ended in a failure and the matter was referred to the appropriate Government. But the appropriate Govt. did not feel that there will be a reference for which he did not refer the dispute . The Union went to Hon'ble High Court, who directed the appropriate Govt. to refer the dispute and the matter came here before this Tribunal .

11. One witness each examined by the management and union but the workman has stated everything in chief supporting the written statement. But in cross examination he could not prove any thing . The entire cross examination is quoted below:-

“I have got no appointment letter issued by the management. My name was not sponsored by the Employment Exchange. We were not working under any contractor. I have got no paper to show that the management was paying me wages. It is not a fact that I was not working there.”

12. From the above cross –examination, it appears that the workman has no appointment letter. Even they could not legally prove the documents as exhibit which were photo copies. Even the witness, unable to say whether he was working for 240 days in a calendar year nor prove any valid pay slip or gate pass, with proper proof. Shri Tulsi Mahto witness of the workman say in cross examination that we were not working under any contractor as well as he also says that I have got not paper to show that the management was paying me wages. It means the workmen was neither the workman of contractor nor the workman of management. But on perusal of list of workman annexed with order of reference that they are the workman of “Sah Builders Contractor Mazdoor”

13. The document of the workman which are photocopies, also do not inspire confidence. The workman may have a good case but the union failed to prove the case before the Tribunal. Even unable to adduce reliable evidence, to come into conclusion .

14. Considering the facts and circumstances of this case, I hold that the demand of United coal workers Union for regularization of services of Shri Sewa Chand Choudhary and 59 others as per annexure, by the management of Kathara Washery is not legal and justified. Hence the workmen were not entitled to get any relief from this Tribunal.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 15/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/149/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 15 of 2016) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/149/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 15 of 2016

Employer in relation to the management of Bastacolla Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- Shri S.K. Behra, Asstt. Manager

For the Workman :- Shri R.R. Ram, Rep.

State:-Jharkhand.

Industry :- Coal.

Dated 26/12/2016

AWARD

By order No.-L-20012/149/2015 IR-(CM-I), dated. 02/02/2016 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bastacolla Area of M/s. BCCL in dismissing Sri Ram Sundar Prasad and Ram Charitar Bhuiya from the services of the company w.e.f. 01.01.1999 is fair and justified? To what relief the concerned workman are entitled to?”

2. The case is received from the Ministry of Labour on 11.02.2016 After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 11.03.2016. And the management files their written statement -cum-rejoinder on 15.07.2016. The point involved in the reference is that the workman has been dismissed from his services.
3. The point involved in the reference is that the workman has been dismissed from his services on the ground of gross negligence and misconduct, by the management by invoking clause 28 of the certified standing order.
4. They were dismissed from service without conducting and domestic enquiry whatsoever as well as the management did not issue any show cause notice prior to dismiss those workmen.
5. During preliminary hearing it is revealed that the case is dismissal of workmen for invoking clause 28 of certified standing order. But he has already out of service for 17 years. It is felt to give another chance to the workman to serve .
6. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-1. But the workman be kept under probation for a period two year. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/121/2011-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 28 of 2012) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/121/2011-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 28 of 2012

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the employers :- Shri D. K. Verma, Advocate

For the Workman :- Shri Pintu Mondal, Rep.

State :- Jharkhand

Industry :- Coal

Dated 26/12/2016

AWARD

By order no . L- 20012 /121/2011 /IR (C-I) dated 26 / 03/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub – section (1) and sub – section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Dhansar Colliery of M/s. BCCL in not providing employment to Sh. Mohan Bhogta the dependant son of Late Kartik Bhogta under the provision of NCWA is fair and justified? To what relief the concerned workmen entitled ?”

2. The case is received from Ministry of Labour on.09.04.2012. After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 30.04.2012 and the management files their written statement on 21.11.2012. One witness has been examined by the management but two witnesses examined on behalf of the workman.. Documents of the workman marked as W-1 to W-8.
3. The case of the workman is that Late Kartik Bhogta was permanent employee of Dhansar Colliery as Miner Loader and died while in service on 02.10.1994. As per NCWA the management provide employment to one dependant of employee who died while in service.
4. Sri Mohan Bhogta son of Kartik Bhogta has applied for employment on 10.02.1995 but inspite of several reminders the management has not provided employment to the dependent son of Late Kartik Bhogta and the management neither provided employment nor regretted his application. Hence Industrial dispute arose.
5. The case of the management that Late Kartik Bhogta was employee of Dhansar Colliery and he died on 02.10.1994 but after the death of late Kartik Bhogta none of his dependent has applied for employment under provision of NCWA, and the Sponsoring Union first time raised an Industrial dispute vide their latter dated 09.10.2009 after the lapse of 15 years from the date of the deceased employee and demanded employment in utter violation of circular issued by CMD of M/s. BCCL for compassionate appointment.
6. It is further submitted by the management that for very reasons the compassionate employment can not be granted after a lapse of reasonable period which must be specified in the rule. According to said circular has no application for dependent employment will be entertained after 18 months from the date of death of disablement, and the object being to enable the family to get over the financial crises which is faces at the time of death of sole bread

winner, the compassionate employment can not be claimed and offered whatever the lapse of time and after the crises is over.

7. The short point to be decided in this reference as to whether the dependant will get appointment, in place of his deceased father who died while in service.

8. The workman died in the year 1994 his son, was 19 years then as per evidence of WW-1. But he raised the dispute after 15 years. Except saying that he applied for job soon after his father death and that was ignored, he remained silent all the years,

9. The workman remaining silent or sleeping about 15 years, hence no claim of the workman will be entertained. It also means for all the fifteen years as on today about twenty years, he is not in distress. Therefore the applicant will not be encourage for back door entry.

10. Considering the facts and circumstances of this case, I hold that the action of the management of Dhansar Colliery of M/s. BCCL in not providing employment to Sh. Mohan Bhogta the dependant son of Late Kartik Bhogta under the provision of NCWA is fair and justified hence he is not entitled to get any relief. Claim rejected.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 24/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/15/2009-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 24 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/15/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 24 of 2009

Employer in relation to the management of Gondudih Colliery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- Shri U.N. Lall, Advocate

For the Workman :- Shri R.R. Ram, Rep.

State:-Jharkhand.

Industry :- Coal.

Dated 16/12/2016

AWARD

By order No.-L-20012/15/2009-IR (CM-I), dated. 13/04/2009 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Gondudih Colliery under Kusunda Area of M/s. BCCL in dismissing Sri Libiya Munda M/Loader from the service of the company w.e.f 22.11.2006 is justified and legal? To what relief is the workman concerned entitled?”

2. The case is received from the Ministry of Labour on 24.04.2009 After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 11.11.2009. But after long delay the management files their written statement-cum-rejoinder on 17.06.2011. Thereafter rejoinder and document filed by both side. The point involved in the reference is that the workman has been dismissed from his services.
3. During preliminary hearing of this case, domestic enquiry held by the management is accept by the Sponsoring Union/workman as Fair & Proper . Thereafter document of the management is marked as M-1 to M-7
4. The point involved in the reference is that the workman has been dismissed from his services on the ground of long absence. But he has already out of service for 10 years. It is felt to give another chance to the workman to serve.
5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee in Cat-1. But the workman be kept under probation for a period two year. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 93/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/194/1993-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 93 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/194/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 93 of 1995

Employer in relation to the management of Kustore Area No. VIII M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- None

For the Workman :- None

State:-Jharkhand.

Industry :- Coal.

Dated 15/12/2016

AWARD

By order No. L-20012/194/1993-IR(C-I) dated 11/08/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the management of Kustore Area No. VIII of M/s. BCCL is justified in retiring on superannuation Shri Hiralal Ghoshal, Pump Operator w.e.f. 28/07/1991? If not, to what relief the workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 48/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/161/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 48 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/161/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 48/1996

Employer in relation to the management of Gondudih Colliery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- None

For the Workman :- None

State:-Jharkhand.

Industry :- Coal.

Dated 19/12/2016

AWARD

By order No. L-20012 /161/1995-IR(C-1) dated 06/08/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Gondudih Colliery of M/s. BCCL in dismissing Sh. Ram Nath Rajwar, miner/Loader from service is justified? If so, what relief the concerned workman is entitled to ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 46/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/169/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 46 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/169/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 46/1996

Employer in relation to the management of Bhowra Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- Shri D. K. Verma, Advocate

For the Workman :- Shri B.B. Pandey, Advocate

State:-Jharkhand

Industry :- Coal

Dated 15/12/2016

AWARD

By order No. L-20012/169/1995-IR(C-I) dated 06/08/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand by the Union for proper designation as Statistical Clerk of Sh. Srimohan Jha and wages in Clerical grade I with effect from 1985 is justified ? If so to what relief is the workman entitled?”

2. This Case is received from the Ministry on 21.08.1996. After receipt of the reference, both parties are noticed. During the pendency of the case Id. Counsel of the workman submits that the Union is not interested to contesting the reference. It is felt that the dispute between parties is resolved. Hence “No dispute” award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 47/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/184/1995-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 47 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/184/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 47/1996

Employer in relation to the management of Govindpur Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- Shri D. K. Verma, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 19/12/2016

AWARD

By order No. L-20012 /184/1995-IR(C-1) dated Nil, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union for payment of Group ‘B’ wages to Sh. Buchkan Jha for plying 35 Tonnes Terrex with retrospective effect by the management is justified? If so, to what relief is the concerned workman entitled to and from which date ?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 60/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/179/1994-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 60 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/179/1994-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 60/1995

Employer in relation to the management of Block II Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- Shri D. K. Verma, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 16/12/2016

AWARD

By order No. L-20012/179/1994-IR(C-I) dated 12/06/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the Chief General manager, Block II Area of M/s. BCCL, P.O. Nawagarh (Dhanbad) in denying promotion to S/ Shri Janardan Singh and Daya Shankar Prasad, Greaser Helper

in Grade D and Subsequent grade C as per provisions of NCWA'S is Justified? If not, to what relief are the concerned workman entitled ?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 42/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/240/1992-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 42 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/240/1992-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 42/1995

Employer in relation to the management of Basudeopur Colliery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- None

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 21/12/2016

AWARD

By order No. L-20012 /240/1992-IR(C-1) dated 04/05/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union for regularization by the principal employer, viz., management of Basudeopur Colliery in Sijua Area of M/s BCCL, of Shri Rahman Mian and 24 others (as per list enclosed) employed through the contractor is legal and justified in the light of the supreme Court Judgment in dina Nath case? If so, to what relief these concerned workmen are entitled and from which date ?

Annexure

SL.No	Name	Father's name
1	Sri Rahman Mian	Sri Hushalu Mian
2	Sri Gulam Rasul	Sri Naula Mian
3	Sri Sohaid Ansari	Sri Shamsul Mian
4	Sri Naresh Yadav	Sri Ram Das Yadav
5	Sri Ram Suchit Yadav	Sri Ram Dat Yadav
6	Sri Arbind Kumar Yadav	Sri Shiv Murti Yadav
7	Sri Uma Shankar	Sri Jairam
8	Sri Jitendra yadav	Sri Saryoo Yadav
9	Sri Mukhadeo	Late Ramratan Yadav
10	Sri Wajir Alam	Sri Sarfuddin
11	Sri Ayub Khan	Sri Badre Alam Khan
12	Sri Dilip Kumar Rajbhar	Sri Lutu Rajbhar
13	Sri Devendra Kumar	Sri Ramdeo Singh
14	Sri Jamaluddin Khan	Sri Nurul hoda
15	Sri Sabir Khan	Sri Samiulah Khan
16	Sri Noor Mohamad	Late Aziz Khan
17	Sri Noor Alam Khan	Sri Khairati Khan
18	Sri Lalan Kumar Singh	Sri Nagdeo Singh
19	Sri Anand Kumar Mandal	Sri Dwarika Mondal
20	Sri Sahdeo Kumar Singh	Sri Jamuna Pd. Singh
21	Sri Jayant Kumar Singh	Sri Rabindra Kr. Singh
22	Sri Rameshwar Singh	Sri Ramadhar Singh
23	Sri Manoj Kumar Singh	Sri Ram Ayodhaya Singh
24	Sri Pradip Kumar Dash	Sri Ghansyam Dash
25	Sri Okhatar Khan	Late Aziz Khan

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 67/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/275/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 67 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/275/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 67/1995

Employer in relation to the management of Kusunda Area M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- None

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 22/12/2016

AWARD

By Order No. L-20012/275/1994-IR(C-I) dated 21/06/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the union is justified in demanding promotion of Shri Mahesh Gope, Night Guard as Night Guard Havaladar w.e.f. 18/01/1983 ? If so, to what relief the workman is entitled to ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 76/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/299/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (I.D. No. 76 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/299/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 76/1995

Employer in relation to the management of Bhowra Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- Shri D.K. Verma, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 15/12/2016

AWARD

By order No. L-20012/299/1994-IR(C-I) dated 14/07/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bhowra Area of M/s BCCL in reverting S/Shri Bhagwati Charan Mishra and Kumud Kumar Jha from clerical Grade-I to Category- I w.e.f. 11/01/1983 is justified? If not, to what relief the concerned workmen are entitled ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workmen, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 126/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/446/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 126 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/446/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 126/1995

Employer in relation to the management of Kharkharee Colliery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- Shri Ganesh Prasad, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 22/12/2016

AWARD

By Order No. L-20012/446/1994-IR(C-I) dated 18/10/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union that the date of birth of Shri Upendra Singh, Night Guard of Kharkharee Colliery be recorded as 15/04/1941 is justified? If so, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 125/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/409/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 125 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/409/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 125/1995

Employer in relation to the management of Mudidih Colliery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- None

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 20/12/2016

AWARD

By Order No. L-20012/409/1994-IR(C-I) dated 10/10/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Mudidih Colliery of M/s BCCL in superannuating Sri Mahabir Singh, Fireman w.e.f. 14/07/1993 is justified? If not, to what relief Shri Singh is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 127/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/456/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 127 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/456/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s. 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 127/1995

Employer in relation to the management of Bhowra Area No. XI of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- Shri D.K. Verma, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 21/12/2016

AWARD

By Order No. L-20012/456/1994-IR(C-I) dated 18/10/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bhowra Area No. XI of M/s. BCCL is justified in dismissing the service of Shri Ram Prasad Singh, Night Guard w.e.f. 17/06/1993. If not, to what relief is Shri Ram Prasad Singh entitled ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 130/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/465/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 130 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/465/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s. 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 130/1995

Employer in relation to the management of Bhalgora Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- Shri D.K. Verma, Advocate

For the Workman :- None

State:-Jharkhand

Industry :- Coal

Dated 20/12/2016

AWARD

By Order No. L-20012/465/1994-IR(C-I) dated 06/11/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union that Shri Shyamjit Harijan and 44 others (as per list enclosed) who were regularized in time- rated category vide order No 8: PM 84: 13587 dt. 14/24 July, 84 are entitle to claim the benefits of Piece Rated Allowance for fixation of wages in converted category is legal and justified? If so, to what relief are the concerned workmen entitled ?”

List of Workmen

1	Sri Abhi Nath Harijan	2	Sri Panchu Mahato
3	Sri Sohan Ram	4	Sri Ash Mohammad
5	Sri Chnatu Das	6	Sri Bhikhi Harijan
7	Sri Ramlal Harijan	8	Sri Mahadeo Singh
9	Sri Bhikhi Singh	10	Sri Kamalpati Singh
11	Sri Ashoo Das	12	Sri Hablal Das
13	Sri Ramlal	14	Sri Anil Bouri
15	Sri Subaran Singh-I	16	Sri Bowri Das
17	Sri Bachu Ram	18	Sri Raju Rajbashi
19	Sri Sanichar Pujaha	20	Sri Sew Nath Harijan
21	Sri Ram Tahal Harijan	22	Sri Biswa Nath Prasad
23	Sri Israil Mia.	24	Sri Shyamjit Harijan
25	Sri Rambilash Dusad	26	Sri Sabrati Mia
27	Sri Buchu Das	28	Sri Habib Mia
29	Sri Gagur Mia-I	30	Sri Sitaram Harijan
31	Sri Bisram Harijan	32	Sri Baliram Harijan
33	Sri Brihaspat Mandal	34	Sri Bandhu Bhuia
35	Sri Gulu Mahato	36	Sri Dukhan Mandal
37	Sri jagdish Mandal	38	Sri Bhuneshwar Mandal
39	Sri Subaran Singh-II	40	Sri Sikhi Harijan
41	Sri Sew Pujan Kurmi	42	Sri Ram Sagar Shaw
43	Sri Rustam Mia –II	44	Sri Umesh Ram
45	Sri Begu Das		

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 83/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/295/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 83 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s.. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/295/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s. 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 83/1995

Employer in relation to the management of 20/21 Pits Murlidih Colliery, BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers :- None

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 16/12/2016

AWARD

By Order No. L-20012/295/1994-IR(C-I) dated 14/07/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the General Manager Mohuda Area No. II of M/s.. BCCL in denying to refer Shri Prem Mahto, Timber Mazdoor to the Apex Medical Board for assessment of his age is justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2017

का.आ. 355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 99/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2017 को प्राप्त हुआ था।

[सं. एल-20012/324/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2017

S.O. 355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 99 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s.. BCCL and their workmen, which was received by the Central Government on 06.02.2017.

[No. L-20012/324/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s. 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 99/1995

Employer in relation to the management of Barora Washery M/s.. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers :- None

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 15/12/2016

AWARD

By Order No. L-20012/324/1994-IR(C-I) dated 25/08/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the General Manager, Central Coal Washiers organization of M/s.. BCCL, Saraidhela in denying to regularizes Sri Rajeshwar Bouri, Helper of Barora Washery as Pump Operator is justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 10/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/33/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41011/33/2008-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 10/2011

The Divisional Railway Manager,
Western Railway, DRM Office, Pratap Nagar,
Baroda (Gujarat)

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
134, Near Vishwakarma Mandir,
Opposite Railway Colony, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Smt. Sonal Patel

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/33/2008-IR(B-I) dated 11.02.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Divisional Railway Manager, Western Railway, Baroda/Ahmedabad in not giving another posting of Safaiwala to Smt. Ramuben, Ex-Gangwoman w.e.f. 25.06.1999 after she was decategorized from the post of Gangwoman, is legal and justified? To what relief the workman is entitled?”

1. The reference dates back to 11.02.2011. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. The second party, The Secretary, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 07.10.2016 expressed unwillingness to proceed in the case and requested to withdraw from the reference.

2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 24/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/1/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41011/1/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 24/2014

The Divisional Railway Manager,
Western Railway, Near Chamunda Bridge, Asarwa,
Ahmedabad (Gujarat)

...First Party

V/s

The Vice President,
Paschim Railway Karmachari Parishad,
Near Vishwakarma Mandir,
Opposite Railway Colony, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : None

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/1/2014-IR(B-I) dated 25.02.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Paschim Railway Karmachari Parishad for correct pay fixation of Shri Man Singh Punja, Pointsman, Ahmedabad at par with his juniors and payment of arrears accordingly by the management of Divisional Railway Manager, Western Railway, Ahmedabad is justified? To what relief the workman is entitled?”

1. The reference dates back to 25.02.2014. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. The second party, The Secretary, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 07.10.2016 expressed unwillingness to proceed in the case and requested to withdraw from the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 30/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/33/94-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/33/94-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th October, 2016

Reference: (CGITA) No. 30/2004

The Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot (Gujarat) – 360001

...First Party

V/s

The Secretary,
Paschim Railway Karmachari Parishad,
E-209, Sarvottamnagar, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri H.B. Shah

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/33/94-IR(B-I) dated 15.06.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of Divisional Railway Manager, Western Railway, Rajkot & Assistant Mechanical Engineer, Rajkot in terminating the services of Shri Ashok B. Pandit, Cleaner, C&W Rajkot w.e.f. 20.09.1993 by way of “Removal from Railway Services” vide N.I.P. dated 20.09.1993 is legal, proper and justified? If not, to what relief the workman is entitled to?”

1. The reference dates back to 15.06.1995. The second party in his statement of claim alleged that Ashok Babulal Pandit was serving as cleaner (as class 4th employee) at Carriage and Wagon Depot, Rajkot under the Divisional Railway Manager, Western Railway, Rajkot. He had been earlier posted at Carriage and Wagon Depot, Ahmedabad

and was an active worker of Paschim Railway Karmachari Parishad. He used to raise employees problems/issues before the railway administration. Paschim Railway Karmachari Parishad is a recognized trade union working all over western railway. The railway administration has been envious to the Paschim Railway Karmachari Parishad activities and used to harass the employees affiliated to the Paschim Railway Karmachari Parishad. The workman Ashok B. Pandit had been a class 4th employee and his seniority was maintained Depot wise instead of Railway Division wise. Due to his union activities, he was transferred to The Carriage and Wagon Depot, Rajkot which was against the provisions of Industrial Disputes Act being the unfair labour practice provided in Para 7 of the 5th Schedule under Section 2(r)(a) and Section 25 U of the Industrial Disputes Act. Therefore, the matter was raised before The Labour Commissioner, Ahmedabad and Ministry of Labour, Government of India in 1992 but to no result, consequently he resumed his duty at new place that is The Carriage and Wagon Depot, Mehsana where he was directed to join duty at Rajkot. In obedience to the order of the railway administration, the later joined at joined where he was served with a charge sheet on 18.02.1992 and after a colourable exercise of inquiry he was removed from service on 20.09.1993. The said action was totally illegal. He approached the appropriate authority against the said action and after a favourable decision he immediately resumed his duties and to call it an unauthorised absence was totally wrong. He further alleged that for the period of absence, railway administration deducted his pay or other allowances which comes with in the definition of punishment but later for the same charge, the punishment of removal was awarded which is against the principles of natural justice. He further alleged that the railway administration also infringed the provisions of the Section 33 of the Industrial Disputes Act, 1947 as Industrial Disputes No. ADI/8/11/93 was pending before the Assistant Labour Commissioner, Ahmedabad by removing the second party workman from the service. He further alleged that the railway administration be restrained to engaged any advocate as per the provisions of the I.D. Act and prayed that the action taken of removal from service vide NIP dated 20.09.1993 be declared null and void and to reinstate with all consequential benefits including back wages and other relief as tribunal deems fit.

2. The first party Divisional Railway Manager, Western Railway vide written statement Ext. 22 submitted that the reference is not maintainable, barred by delay, laches and acquiescence as no explanation has been giving regarding the delay and laches. All the averments made in the statement of claim are false and incorrect because workman Ashok B. Pandit was posted in Carriage and Wagon Department at Sabarmati at the relevant time under the administrative control of Divisional Railway Manager, Western Railway, Rajkot. Paschim Railway Karmachari Parishad is not a recognised trade union. It is incorrect to say that railway administration used to harass the employees like enemy due to trade union activities. It is not true and correct to say that workman Ashok B. Pandit, a cleaner at C&W, Depot, Sabarmati was transferred due to trade union activities and raising disputes about fellow workman. His transfer was a routine transfer due to administrative exigency being a condition of service which was legal and justified. The cause of remaining absence and not joining at the transferred place was not explained. He raised the dispute before the Assistant Labour Commissioner by demand notice but it was not referred for adjudication by failure report. The second party workman attempted to resume duty at transfer place Mehsana on 26.02.1992 without any intimation for his absence; therefore, he was directed to approach DRM, Rajkot. He did not comply the transfer for more than 19 and half months. Therefore departmental inquiry was initiated serving with the charge sheet dated 18.02.1992 by way of SF- 5. It is wrong to say that departmental inquiry was a colourable exercise of power. The transfer order was also challenged before the Assistant Labour Commissioner who did not refer the matter for adjudication and the non-payment of wages was based on the policy of no work no pay, therefore, it cannot be said to be punishment and violative of Section 33 of the I.D. Act. The truth is that the second party workman Ashok B. Pandit was working as cleaner at Sabarmati ADI(MG) with in the Rajkot Division. He was transferred and relieved vide order No. ECW/2A/177 to C&W Depot, Mehsana and to resume duty there within 10 days. But instead of joining, he raised the dispute before the Assistant Labour Commissioner who did not refer it for adjudication. The said order became final as being not challenged in the Gujarat High Court. During the course of proceedings before the Assistant Labour Commissioner, he remained absent; therefore he was subjected to departmental inquiry by serving charge sheet SF-5. He was given full opportunity to defend himself. All the witnesses were examined in his presence with an opportunity to cross-examine them. After a full-fledged inquiry, he was removed from service. It is noteworthy that he did not challenge the transfer order in the present reference. Thus the reference is devoid of merits and deserved to be rejected.

3. On the basis of the pleadings and the reference following issues are to be addressed by the tribunal:

- (i) Whether the action of Divisional Railway Manager, Western Railway, Rajkot & Assistant Mechanical Engineer, Rajkot in terminating the services of Shri Ashok B. Pandit, Cleaner, C&W Rajkot w.e.f. 20.09.1993 by way of "Removal from Railway Services" vide N.I.P. dated 20.09.1993 is legal, proper and justified?
- (ii) To what relief, if any, the workman is entitled?

Issue No. (i): The burden to prove it was on the second party workman Ashok B. Pandit stated on oath by way of affidavit/examination in chief that he was serving as cleaner class 4th staff in 1990 in Carriage and Wagon Depot, Ahmedabad under in Divisional Railway Manager, Rajkot. During the said year 1990, the seniority of the class 4th

employee was maintained Depot wise and their transfer was not permissible as per Western Railway Establishment Manual. On 16th of June, 1990, Chief Depot Officer, Ahmedabad issued a letter No. E/839/2 dated 16.06.1990 for his transfer to work under Chief Carriage & Wagon Superintendent, Mehsana. Before accepting the said transfer and letter, he questioned the validity of the letter as to under what circumstances he (workman) was transferred to outside Ahmedabad Carriage & Wagon Depot but to no reply, he accepted the letter. Thereafter, he approached the proper authority for questioning the legality of the letter but he was relieved from the Ahmedabad Depot and his name was removed from the Muster roll. He also stated that as he questioned the legality of the order, therefore, it is questionable as to how he was treated as absence from duty. On 12.02.1992, he resumed duty at Mehsana where he was directed to DRM, Rajkot and there he received letter of his transfer from Mehsana to Rajkot which he carried out and joined the duty. On 18.02.1992, he was issued charge sheet SF-5 by B.L. Kapadia, AME Rajkot charging him that he remained unauthorised absent from 18.02.1990 to 12.02.1992, he was subjected to inquiry. The inquiry officer permitted the examination of 7 witnesses instead of 3 witnesses mentioned in SF-5 being violative of B.A. Rule 1. In the said inquiry, he was held guilty of long unauthorised absence and was punished from removal of service. In his cross-examination, he stated that vide order dated 16.06.1990 he was transferred from Ahmedabad to Mehsana to resume duty being the order illegal and also being challenged before the appropriate authority. He admitted that he did not apply for the extension of joining time. He also admitted that he did not join from 16.06.1990 to 11.06.1992. He participated in the departmental inquiry and as a punishment he was removed from service.

In reply to the aforesaid evidence Umnesht Harivadan Trivedi Divisional Personal Officer, Rajkot Division stated on oath that the workman was appointed as cleaner at Carriage & Wagon Depot, Ahmedabad later vide order in question, he was transferred to C & W, Mehsana in the same scale and post and later he was transferred to Rajkot on the administrative exigency which was one of the service condition. At the time of transfer from C & W, Mehsana, he raised No. of demands by submitting a charter before the Assistant Labour Commissioner. Same were after reconciliation, culminated in to failure. He has not raised any dispute regarding the transfer before the Assistant Labour Commissioner. Therefore, the said transfer was final. The Railway Administration vide office memorandum DRM(E) RJT Memorandum Member ECW/CA/177 dated 11.06.1990 Ashok Pandit was transferred to C&W Mehsana giving him 10 day time to join there and was relieved from duty at Ahmedabad. But he flouted the order and absented without following the departments leave rules. He remained absent for a long time therefore he was served a charge sheet dated 12.02.1998. He was subjected to enquiry and was punished under going through departmental enquiry. In his cross-examination, he has failed to explain as to why he was transferred against the spirit of Western Railway order No. E.P. 839/2 dated 28.01.1970 wherein it has been provided that transfer should take place strictly according to the seniority of the staff. The aforesaid order also provided that according the Railway Boards letter No. E(NGY66-TR2/2) dated 27.07.1966. The junior most employees should be transferred first whenever any contraction took place. The aforesaid witness of the first party has failed to explain in his cross-examination as to whether the workman Ashok B. Pandit was junior most and was transferred as per the Railway Board's directions.

4. Thus in the light of the aforesaid evidence of the first party witness, the action of the first party prima facie is against the directives and order of the Railway Board which can be said to be biased and vindictive. Thus the action taken deserves to be struck down.

5. Thus in the light of the aforesaid reasoning, I come to the conclusion that the action taken by the first party was illegal, improper and unjustified.

6. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र (नाउ एस बी आई) के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 976/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/115/93-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 976/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Saurashtra (Now SBI) and their workmen, received by the Central Government on 08.02.2017.

[No. L-12012/115/93-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th October, 2016

Reference: (CGITA) No. 976/2004

The Zonal Manager,
State Bank of Saurashtra (now SBI),
Swami Vivekananda Road,
Rajkot (Gujarat) – 360002

...First Party

V/s

Shri Dinkar P. Doshi,
C/o Shri Jagdip C. Doshi,
Advocate, 1, New Ghee Kanta Road,
Rajkot (Gujarat)

...Second Party

For the First Party : Mrs. Kajal L. Kalwani

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/115/93-IR(B-I) dated 17.11.1994 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of Saurashtra, Rajkot in terminating the services of Shri Dinkar P. Doshi w.e.f. 30.11.1987 is legal, justified and proper? If not, to what relief is the concerned worker entitled and from which date?”

1. The reference dates back to 17.11.1994. The second party submitted the statement of claim Ext. 4 on 09.04.2004 and the first party submitted the written statement Ext. 6 on 19.08.2007. The second party on 19.01.2006 was examined but since then the second party workman did not appear for cross-examination. Thus it appears that the second party workman is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as “the action of the management of State Bank of Saurashtra, Rajkot in terminating the services of Shri Dinkar P. Doshi w.e.f. 30.11.1987 is legal, justified and proper” in the circumstances of the second party workman’s unwillingness to get him cross-examined.
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 439/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/43/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 439/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 08.02.2017.

[No. L-12011/43/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 13th October, 2016

Reference: (CGITA) No. 439/2004

The Chief General Manager,
State Bank of India,
L.H.O., Bhadra,
Ahmedabad (Gujarat) – 380001

...First Party

V/s

Shri Vishnu S. Shiresiya & Shri Amrut N. Shah,
C/o Nalin U. Bhatt, Advocate, B-201,
Sardar Patel Chambers, Vasant Chowk, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/43/2001-IR(B-I) dated 11.12.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India in terminating the services of Shri Amrut N. Shah w.e.f. 01.04.1997 and not regularising the services of Shri Vishnu S. Shiresiya is justified? If not, what relief they are entitled?”

1. The reference dates back to 11.12.2001. The second party submitted the statement of claim Ext. 4 on 19.09.2002 and the first party submitted the written statement Ext. 8 on 05.04.2004. The second party submitted the affidavit Ext. 12 and Ext. 13 of their witness Vishnubhai Somabhai Serasiya and Amratbhai Narangbhai Shah respectively on 29.12.2011. Since then the second party and their witnesses have not been appearing in the tribunal for their cross-examination.

2. Thus it appears the second party and their witnesses as well are not willing to prosecute the case and to get them cross-examined. Thus the reference is disposed of in the absence of the cross-examination of the witnesses as “the

action of the management of State Bank of India in terminating the services of Shri Amrut N. Shah w.e.f. 01.04.1997 and not regularising the services of Shri Vishnu S. Shiresiya is justified”.

3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 682/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/227/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 682/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/227/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th October, 2016

Reference: (CGITA) No. 682/2004

1. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda (Gujarat) – 390004
2. The Asstt. Mechanical Engineer (CNW),
Western Railway, Karchiya Yard,
Baroda (Gujarat) – 394220

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole Kothi,
Baroda (Gujarat) – 390001

...Second Party

For the First Party : Shri N.J. Acharya

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/227/99-IR(B-I) dated 26.11.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Railway Administration, Western Railway, Baroda Division, Baroda and its Officers in promoting Shri Virbahadur M. to the post of ‘Machineman Grade – I’ w.e.f. 19.05.1993, instead of 01.03.1990 is legal, proper and justified? If not, to what relief the concerned workman, Shri Virbahadur M. is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 26.11.1999. Both the parties submitted their statement of claim Ext. 4 and written statement Ext. 10 respectively. At the stage of leading evidence, Shri J.K. Ved, Divisional Secretary, Paschim Railway Karmachari Parishad, on behalf of the second party requested to withdraw the reference.
2. Thus the reference is disposed of as not pressed and withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 739/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/27/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 739/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41011/27/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 6th October, 2016

Reference: (CGITA) No. 739/2004

1. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda (Gujarat) – 390004
2. The Divisional Electrical Engineer (TRS),
Western Railway, Electric Loco Shed, Navagard,
Baroda (Gujarat) – 390002
3. The Sr. Divisional Electrical Engineer (TRO),
Western Railway, Pratapnagar,
Baroda (Gujarat) – 394001

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole, Kothi,
Baroda (Gujarat) – 390001

...Second Party

For the First Party : Shri Rajesh Singh
 For the Second Party : Shri Hitesh D. Katharotiya & R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/27/2001-IR(B-I) dated 31.10.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad, Baroda for supply of Welfare amenities i.e. Uniform/Liveries, Woolen Jurcy, Shoes, Rain Coat, Helmet, Identity Card, Silver Coin etc. and for payment of running allowance at par with the staff working in Electric Loco Shed, Baroda to the staff working in Trip Inspection Shed (Under Chief T Raction Crew Controller, Baroda Yard) is justified? If so, what relief the concerned workmen is entitled?”

1. The reference dates back to 31.10.2001. Both the parties put in their appearance by filing their vakalatpatra. The second party represented by The President, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 06.10.2016 expressed in writing unwillingness to prosecute the case.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 846/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/265/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 846/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/265/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
 Presiding Officer, CGIT-cum-Labour Court,
 Ahmedabad,
 Dated 7th October, 2016

Reference: (CGITA) No. 846/2004

1. The Assistant Engineer (South),
 Western Railway, Pratapnagar,
 Baroda (Gujarat)
2. The Sr. Divisional Engineer (South),
 Western Railway, Pratapnagar,
 Baroda (Gujarat)

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole Kothi,
Baroda (Gujarat) – 390001

...Second Party

For the First Party : Shri H.B. Shah

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/265/2003-IR(B-I) dated 24.03.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Western Railway in removal from services of Shri Chagon Galiya is legal, proper and justified? If not, to what relief the concerned workman Shri Chagon Galiya is entitled to and from which date?”

1. The reference dates back to 24.03.2004. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. The second party, The Secretary, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 07.10.2016 expressed unwillingness to proceed in the case and requested to withdraw from the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 364.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 280/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/37/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 280/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/37/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st October, 2016

Reference: (CGITA) No. 280/2004

1. The Chief Project Manager,
Western Railway, Kalupur,
Ahmedabad (Gujarat)

2. The Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot (Gujarat)
3. The Dy. Chief Engineer (C) – II,
Western Railway, Kalupur,
Ahmedabad (Gujarat) – 380001

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
J.P. Chowk, Khanpur,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party :

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/37/99-IR(B-I) dated 17.02.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad that the employee Shri A.K. Gupta, PWI (C) be regularized as PWI Gr.I in the scale 2200-3200 vide DRM Rajkot vide order dated 22.05.1997 and the DAR action vide charge sheet dated 30.05.1997 be finalized within the stipulated time set out by the General Manager’s letter No. EP (DAR)/308/14/8(I) dated 31.07.1990 is legal and justified? If yes then to what relief the concerned employee is entitled to?”

1. The reference dates back to 17.02.2000. The second party submitted the statement of claim Ext. 3 on 14.08.2000 and the first party submitted the written statement Ext. 4 on 30.10.2001. Since then the second party has not been leading evidence. It is noteworthy that Industrial Disputes Act will not apply under Section 2 (s) of the Act in following case –

(iv) Who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by nature of the duties attached to the office or by reason of the powers vested in him, functions of a managerial nature. Note: Ten thousand rupees has been substitute for one thousand six hundred rupees w.e.f. 15.09.2010 by Act 24 of 2010.

2. In the present case, the workman is public works inspector of Grade I in the scale of Rs.2200-3200/-. He is holding the supervisory post under him there were the posts of APWI and Apprantice.
3. Thus the workman being having the pay scale more than the statutory limit of wages and supervisory nature. The dispute cannot be adjudicated by this tribunal. Thus the workman is advised to approach Central Administrative Tribunal for the relief claim.
4. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1224/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/54/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1224/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41011/54/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 1224/2004

1. The Dy. Chief Engineer (C & S),
Western Railway,
Railwaypura, P.O.,
Ahmedabad (Gujarat) – 380001
2. The Dy. Chief Engineer (Construction),
Western Railway,
Gandhidham (Gujarat)

...First Party

V/s

The Secretary,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam Nagar, Nr. New Railway Colony, Sabarmati,
Ahmedabad (Gujarat) – 380019

...Second Party

For the First Party : None

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/54/2002-IR(B-I) dated 07.05.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Dy. Chief Engineer (Construction), Western Railway, Gandhidham in not paying suspension allowance to Shri Shyamji Damji, Pump Driver, for the period of 2 years from 12.07.1994, as claimed by workman is justified? If not what relief the concerned workman is entitled for?”

1. The reference dates back to 07.05.2003. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. The second party, The Secretary, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 07.10.2016 expressed unwillingness to proceed in the case and requested to withdraw from the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 172/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/62/98-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 366.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 172/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/62/98-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th October, 2016

Reference: (CGITA) No. 172/2004

1. The Chief Project Manager – I,
Western Railway, Station Building,
Ahmedabad (Gujarat)
2. The Dy. Chief Engineer (C),
Western Railway,
Opp. Platform No. 4, Kalupur Railway Station,
Ahmedabad (Gujarat)

...First Party

V/s

The President,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam Nagar, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri H.B. Shah

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/62/98-IR(B-I) dated 10.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule :

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad, Ahmedabad that the employee Shri Inderjeet Singh, IOW under CPM, Ahmedabad is entitled for promotion as IOW Gr. II in the scale of 1600-2600 at par with his junior Shri O.P. Agarwal, IOW Gr. III is legal and justified? If yes, to what relief the concerned employee is entitled to?”

1. The reference dates back to 10.03.1999. After receiving the notice issued by the tribunal, the second party submit the statement of claim Ext. 6 alleging that the workman Inderjeet Singh was initially appointed as S.O. Mistri in the scale of Rs.1400-2300/- (RP) on 13.02.1962 in the survey and construction department of Western Railway. He was at No. 20 in the seniority list of the construction department of western railway published in 1972 while Jahangirkhan, Cheetay khan and O.P. Agarwal were at 48, 79 and 106 respectively. Inderjeet Singh and others were promoted on ad

hoc basis as Inspector of Works Grade III in the scale of Rs.1400-2300/- (RP) as and when vacancy occurred. In the year 1972, some Inspector of Works Grade III in the aforesaid scale was recruited from the open category. They were also given seniority over the locally promoted rankers and rankers were reverted to the lower post. Therefore the rankers approached the Hon'ble High Court, Gujarat. High Court in his judgement 24.02.1976 ordered that the services of the applicant shall remain unaffected by the reversion orders and they shall be given all the benefits if any on the basis as if they were not reverted by the impugned order. Appeal moved by the first party was also dismissed by the Supreme Court on 03.10.1991. The first party on the basis of the Supreme Court judgement dated 03.10.1991 awarded the seniority to the ad hoc promoted IOWs Grade III vide their letter No. E/1084/2/41 (S&C) Dup. EE/1030/5/1/1 of 28.06.1996 from their date of ad hoc promotion as Inspector of Works Grade III. Thus aforesaid O.P. Agarwal and Cheetaykhan and others were given seniority as Inspector of Works Grade III w.e.f. 21.04.1972. He further alleged that Inderjeet Singh was again promoted on ad hoc basis and he is continuously working as Inspector of Works Grade III in the scale of Rs.1400-2300/- since 1978 without any break. But Western Railway first party recruited certain Inspector of Works Grade III in the scale of Rs.1400-2300/- from the open category again in 1979 onward and put them senior to the promoted IOW and applicant as well. Those direct recruits are as under:

- (a) KalidasBajpai Survey & Construction on 21.08.79
- (b) KhurshidAzam Ajmer on 04.09.79
- (c) H.K. Srivastave Survey & Construction on 29.08.79
- (d) Kalicharan Sharma Survey & Construction on 18.04.84

These aforesaid newly recruited Inspector of Works Grade III against the Spirit of the Supreme Court judgement were promoted to the IOW Grade II in the scale of Rs. 1600-2660/- overlooking the seniority of applicant Inderjeet Singh in the year 1985 and 1986. Thus the workman/applicant Inderjeet Singh has prayed for his promotion to the post of Inspector of Works, Grade II from the date earlier to the date of promotion of the direct recruits and as well as from the date the promotion granted to his immediate junior in the promotee cadre.

2. The first party in his written statement Ext. 9 submitted that the questioned post is a post of selection and second party was called for selection, written and suitability test but the workman Inderjeet Singh did not prefer to appear in the aforesaid test. Promotion on ad hoc basis is a stock gap arrangement till suitable candidates become available. The promotion of the workman Inderjeet Singh was made on ad hoc basis; therefore, he cannot claim the seniority as well as the benefits thereof.

3. On the basis on the pleadings, following issue arised:

Whether the demand of the Paschim Railway Karmachari Parishad, Ahmedabad that the employee Shri Inderjeet Singh, IOW under CPM, Ahmedabad is entitled for promotion as IOW Gr. II in the scale of 1600-2600 at par with his junior Shri O.P. Agarwal, IOW Gr. III is legal and justified?

4. The burden to prove the aforesaid issue was lying on the second party workman Inderjeet Singh and he was examined by the second party and he supported and reiterated the averments made in the statement of claim. But the first party did not come forward to lead his evidence even after giving a dozen of opportunities. It is also noteworthy that the advocate for the first party has also been absent since last several dates. Thus in the light of the un rebutted evidence of the workman/applicant, the aforesaid issue is decided in the affirmative.

5. Thus it is find that "the demand of the Paschim Railway Karmachari Parishad, Ahmedabad that the employee Shri Inderjeet Singh, IOW under CPM, Ahmedabad is entitled for promotion as IOW Gr. II in the scale of 1600-2600 at par with his junior Shri O.P. Agarwal, IOW Gr. III is legal and justified".

6. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 259/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/33/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 259/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41011/33/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 259/2004

1. The General Manager,
Western Railway, H/Qr. Building, Churchgate,
Mumbai – 400001
2. The Chief Project Manager,
Western Railway, Kalupur,
Ahmedabad (Gujarat) – 380001

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
J.P. Chowk, Khanpur,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri V.K. Dabra

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/33/99-IR(B-I) dated 20.01.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad that DAR action initiated on Shri Mahendra Singh C. Rana, Store Keeper vide Charge Sheet dated 30.05.1997 be finalized within the stipulated time set out by the General Manager’s letter No. EP (DAR) / 308/14/8(I) dated 31.07.1990 is legal and justified? If yes then to what relief the concerned employees is entitled to?”

1. The reference dates back to 20.01.2000. The second party submitted the statement of claim Ext. 2 on 04.04.2000 and written statement was filed by the first party on 31.05.2001. Today on 07.10.2016 on behalf of the second party, Shri R.S. Sisodiya, The Divisional Secretary, Paschim Railway Karmachari Parishad, expressed unwillingness to proceed in the case and requested to withdraw from the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 566/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/99/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 566/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/99/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 566/2004

1. The General Manager,
Western Railway,
Churchgate, Mumbai – 400001
2. The Sr. Divisional Mechanical Engineer,
Western Railway, Diesel Shed,
Sabarmati, Ahmedabad (Gujarat) - 380001
3. The Divisional Railway Manager,
Western Railway, Divisional Office, Kothi Compound,
Rajkot (Gujarat) – 360001

...First Party

V/s

The Hon. Secretary,
General Workmen's Union, Sinduri Mataa Devasthan,
ST Nagar Road,
Godhra (Gujarat) – 389001

...Second Party

For the First Party :

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/99/2003-IR(B-I) dated 11.07.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of Divisional Railway Manager, Western Railway, Mumbai and others in rejecting the increase in salary of Shri Maheshbhai J. Prajapati, Kitter Grade, 2, Diesel Loco Shed, Sabarmati with informing him prior is legal, proper and justified? If not then to what relief the concern employee is entitled to?”

1. The reference dates back to 11.07.2003. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. Today on 07.10.2016 on behalf of the second party, Shri J.K. Ved, The General Secretary, General Workmen's Union, expressed willingness to withdraw the case.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 292/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/9/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 292/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/9/2000-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 292/2004

The Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot (Gujarat)

...First Party

V/s

The General Secretary,
Paschim Railway Karmachari Parishad,
J.P. Chowk, Khanpur,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri Janak R. Pandya

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/9/2000-IR(B-I) dated 24.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of Divisional Railway Manager, Western Railway, Rajkot Division in denying opportunity for selection in Gr. III Fitter to Shri Hiralal R. during the trade test conducted in 1988-89 is legal and justified? If not then to what relief the concern employee is entitled to?”

1. The reference dates back to 24.05.2000. The second party submitted the statement of claim Ext. 6 on 25.12.2000 but no written statement was filed by the first party despite put in his appearance to his advocate. Today on 07.10.2016 on behalf of the second party, Shri J.K. Ved, The General Secretary, Paschim Railway Karmachari Parishad, expressed willingness to proceed withdraw the case.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 293/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/8/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 293/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/8/2000-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st October, 2016

Reference: (CGITA) No. 293/2004

The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot (Gujarat)

...First Party

V/s

The General Secretary,
Paschim Railway Karmachari Parishad,
J.P. Chowk, Khanpur,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri H.B. Shah & Janak R. Pandya

For the Second Party : Shri B.K. Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/8/2000-IR(B-I) dated 24.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Rajkot Division of Western Railway in imposing the penalty of stoppage of 3 years annual increment on Shri Sharad K. Call Bey under Loco Foreman, Mehsana on the alleged charged of misconduct vide charge sheet, No. E/308/M/97/5/13 dated 18.11.1997 is legal and justified? If not, to what relief the concerned employee is entitled to?”

1. The reference dates back to 24.05.2000. The second party submitted the statement of claim Ext. 6 on 19.08.2002 and the first party submitted the written statement Ext. 8 on 20.04.2005. Since then the second party has not been leading evidence and Shri R.S. Sisodiya, The General Secretary, Paschim Railway Karmachari Parishad, expressed unwillingness to prosecute the case and requested to withdraw from the reference.
2. Thus the reference is decided as not pressed. Therefore, the action of the management of Rajkot Division of Western Railway in imposing the penalty of stoppage of 3 years annual increment on Shri Sharad K. Call Bey under Loco Foreman, Mehsana on the alleged charged of misconduct vide charge sheet, No. E/308/M/97/5/13 dated 18.11.1997 is legal and justified.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 371.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 792/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/107/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 8th February, 2017

S.O. 371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 792/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 08.02.2017.

[No. L-41012/107/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 7th October, 2016

Reference: (CGITA) No. 792/2004

1. The General Manager,
Western Railway,
Mumbai – 400001
2. The Chief Permanent Way Inspector,
Western Railway,
Utran, Distt. Surat (Gujarat)
3. The Works Manager,
Western Railway, Pratapnager,
Baroda (Gujarat) – 390004

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole, Kothi,
Baroda (Gujarat) – 390001

...Second Party

For the First Party : K.J. Parikh

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/107/2002-IR(B-I) dated 26.11.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Western Railway, Baroda in not giving the officiating allowances to Shri Gambhir Virsingh in the grade of 950-2500 w.e.f. February, 1997 to May, 2000 and not promoting the workman Shri Gambhir Virsingh to the post of Welder is justified? If not, what relief the concerned workman is entitled and from which date?”

1. The reference dates back to 26.11.2002. Both the parties were served but neither of the parties submitted their statement of claim or written statement, as the case may be. The second party, The Secretary, Paschim Railway Karmachari Parishad, Shri R.S. Sisodiya today on 07.10.2016 expressed unwillingness to proceed in the case and requested to withdraw from the reference.
2. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नाबार्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 178/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/44/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 372.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 178/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of NABARD and their workmen, received by the Central Government on 08.02.2017.

[No. L-12012/44/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 4th January, 2017

Reference: (CGITA) No. 178/2006

The Chief General Manager,
NABARD Tower, Opp. Usmanpura Municipal Gardan,
Ahmedabad (Gujarat)

...First Party

V/s

Shri Ratilal Dhanjibhai Shirsar,
Mishion Pada, Ahwa,
Dang (Gujarat)

...Second Party

For the First Party : Shri Ketan Kamdar

For the Second Party : Shri Kamlesh B. Bhavsar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/44/2006-IR(B-II) dated 13.09.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of National Bank of Agricultural and Rural Development (NABARD) in terminating the services of Sh. Ratilal Dhanjibhai Shirsar, Ex-Sweeper w.e.f. 26.09.2001 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

1. The reference dates back to 13.09.2006. The second party submitted the statement of claim Ext. 11 on 23.04.2009 while pending in the Industrial Tribunal Central, Gujarat and the first party also submitted the written statement Ext. 14 on 26.05.2010 along with documents vide list Ext. 15 while pending in the aforesaid tribunal. Later the reference was transferred to this tribunal on 29.06.2011. At that point of time, the advocates for both the parties were present but thereafter since 28.01.2013, the second party stopped coming to the tribunal for leading evidence. The first party advocate moved an application Ext. 17 on 10.09.2013 for dismissal of the reference on the ground that the second party and his advocate has been absent since last 2 and half years. But on 28.03.2014, the advocate for the second party suddenly appeared and sought adjournment vide application Ext. 18 which was allowed but since then the second party has been absent and has refrained to lead evidence despite giving last opportunity in his absence. But again on 26.05.2016 and 05.10.2016, the second party failed to appear and to lead evidence. Thus again today on 04.01.2017, the second party is absent.
2. Thus this tribunal has no alternative but to dispose of the reference in absence of the second party evidence with the observation as under: “the action of the management of National Bank of Agricultural and Rural Development (NABARD) in terminating the services of Sh. Ratilal Dhanjibhai Shirsar, Ex-Sweeper w.e.f. 26.09.2001 is legal and justified.”
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 373.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 116/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-17011/13/1997-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 08.02.2017.

[No. L-17011/13/1997-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 9th January, 2017

Reference: (CGITA) No. 116/2004

The Sr. Div. Manager,
LIC of India,
Divisional Office,
Jeevan Prakash, Tilak Road,
Ahmedabad (Gujarat)

...First Party

V/s

The General Secretary,
LIC Employees Union,
Jeevan Prabha Tilak Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri Raghuvir Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17011/13/97-IR(B-II) dated 20.10.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management in not reimbursing the LTC Claim, on the basis of Railway fare by the appropriate class, irrespective of the actual mode of travel used subject to the prescribed limit or the amount actually spent by the employee whichever is less, under sub-clause XV of clause 18 of Part –II of LIC of India (LTC) Instructions 1994 is legal and justified? If not, to what relief the said workman is entitled?”

1. The reference dates back to 20.10.1998. First party submitted the vakalatpatra Ex. 5 of his advocate Kishore K. Gadhia on 22.01.1999 and the second party submitted the authority letter Ex. 6 on 20.09.1999. Second party also submitted the statement of claim Ex. 10 on 15.12.1999. The first party submitted the written statement Ex. 12 on 10.04.2000 along with documents vide list Ex. 14.
2. This reference was transferred to this tribunal vide order dated 19.10.2010. Both the parties appeared in the case thereafter till 25.10.2012.
3. The second party workman was examined by the Industrial Tribunal on 10.10.2000 but did not appear for cross-examination since 11.02.2013. Thus the examination in chief of the workman has no evidentiary value in the absence of the cross-examination. Thus in the absence of the cross-examination, the second party workman has failed to prove his case.
4. Thus in the absence of the conclusive evidence of the second party workman, the reference has no force and disposed of with the observation as under: “the action of the management in not reimbursing the LTC Claim, on the basis of Railway fare by the appropriate class, irrespective of the actual mode of travel used subject to the prescribed limit or the amount actually spent by the employee whichever is less, under sub-clause XV of clause 18 of Part –II of LIC of India (LTC) Instructions 1994 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 374.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 124/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/15/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 08.02.2017.

[No. L-12012/15/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 3rd January, 2017

Reference: (CGITA) No. 124/2012

The Zonal Manager,
Bank of India, Zonal Office,
Bhadra,
Ahmedabad (Gujarat)

...First Party

V/s

Shri Bankim C. Shah,
B/403, Surbhi Apartments,
Opp. Prithvi Towers,
Jodhpur Gam Road, Satellite,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri J.D. Chalis Hazaar

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/15/2012-IR(B-II) dated 29.08.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of India in imposing the punishment of dismissal from service without notice upon Shri Bankim C. Shah, Ex-Staff Clerk cum Cashier Category ‘E’ vide order dated 18.06.2002 is legal and justified? What relief the workman concerned is entitled to?”

1. The reference dates back to 29.08.2012. Neither of the parties submitted their statement of claim or written statement as the case may be, despite service of notice on them.

2. Today on 03.01.2017, the second party B.C. Shah has moved an application Ext. 5 stating that he has settled the matter with the first party Bank of India. He has also submitted his PAN, Votar Identity Cards and also the electricity bill of his house establishing his identity. He has requested for closure of the reference.

3. Thus the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 375.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 498/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/39/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 498/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 08.02.2017.

[No. L-12011/39/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 3rd January, 2017

Reference: (CGITA) No. 498/2004

The Chief Manager,
Bank of India,
Navrangpura Branch, Swastik Society Char Rasta,
Ahmedabad (Gujarat) – 380009

...First Party

V/s

The General Manager,
Bank of India Staff Union, C/o Bank of India,
Ahmedabad and Gujarat Branches, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party :

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/39/2002-IR(B-I) dated 18.06.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of India through the Chief Manager, Ahmedabad in terminating the services of Shri Y.N. Pandit by way of Compulsory Retirement is legal, proper and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 18.06.2002. The second party submitted the statement of claim Ext. 3 on 14.08.2002 and the first party submitted the written statement Ext. 8 in April, 2005. Since then the second party has been absent and has also not lead his evidence. Thus it appears that the second party has no willingness to prosecute the case.
2. Therefore, the reference in the absence of the evidence of the second party workman is disposed of with the observation as under: “the action of the management of Bank of India through the Chief Manager, Ahmedabad in terminating the services of Shri Y.N. Pandit by way of Compulsory Retirement is legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 115/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-37011/7/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 08.02.2017.

[No. L-37011/7/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd August, 2016

Reference: (CGITA) No. 115/2010

The Chairman,
Kandla Port Trust,
P.O. Box No. – 50,
Gandhidham, Kutch

...First Party

V/s

The Vice President,
Kandla Port & Dock SC/ST Employees Union,
SGX 36-37, Ward 2/B,
Adipur, Kutch

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/7/2008-IR (B-II) dated 05.02.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Chairman, Kandla Port Trust, P.O. Box No. 50, Gandhidham, Kutch in not filling up the Post of Nursing Sister by S.C. Candidate, Smt. Rasila R Chavda working as Staff Nurse against the reserved roster point No. 7 of S.C. candidate and filling up the post of Nursing Sister by General Candidates in Medical Department of KPT in the year 2007 is legal and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 05.02.2009. Both the parties are served and also filed the vakalatpatra Ext. 4 and 6 of their advocates on 03.02.2011 and 23.07.2012 respectively. But since 03.02.2011, the second party workman has refrained to submit the statement of claim even after a lapse of more than 5 years. Moreover the advocate of the second party workman moved an application Ext. 7 informing the tribunal that his client has not been in his contact. Therefore it appears that the second party workman has not been willing to prosecute the case. Thus the tribunal has no option but to dismiss the reference in non-prosecution of the case by the second party.
2. Thus the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2017

का.आ. 377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 103/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/74/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th February, 2017

S.O. 377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 08.02.2017.

[No. L-12011/74/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/103/07

General Secretary,
Prathadith Karamchari Kalyan Manch,
9, Sanwar Road,
Ujjain

...Workman/Union

Versus

Assistant General Manager,
Dena Bank, Personnel Department,
Regional Office, 107,
Berasia Road,
Bhopal (MP)

...Management

AWARD

Passed on this 20th day of October 2016

1. As per letter dated 8-10-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/74/2007-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, Regional Office, Dena Ban, Bhopal in terminating the services of Shri Jai Singh Solanki w.e.f. April 2004 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was engaged on daily wages by Branch Manager Sarad Lad in November 1989. He was paid wages Rs.18 per day. The wages were increased up to Rs.90 per day. He was working 6 days in a week Monday to Saturday. He completed 240 days continuous service during each of the year till April 2004. His services were terminated without notice, retrenchment was not paid to him. He is covered as employee under Section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. Principles of last come first go was not followed while terminating his services thereby management violated Section 25 G,N of ID Act. After termination of his service, management engaged other persons for work. Workman was not given opportunity of re-employment. Thereby management violated Section 25 of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement on 5-6-09 opposing claim of workman. 2nd party raised objection that Union is not existing Union is not recognised by management of Dena Bank. Any employee of said Bank are not members of the Union Union has no locus to raise the dispute. The dispute is raised after 7 years is not tenable. Ist party workman was not appointed following recruitment process. His services are not terminated by management. 2nd party denies that workman is illegally terminated violating provisions of ID Act.

4. 2nd party further submits that it is covered by statutory rules and regulations. The appointments are made as per the rules. Workman was not appointed following recruitment process. He was hired from time to time by Branch Manager for miscellaneous work. It doesnot amount to appointment. When person is engaged on daily wages, contract engagement starts in morning and automatically ends at end of the day such casual engagement is not covered under Section 2(oo) of ID Act. Disengagement of such casual workers is covered under Section 2(oo)(bb) of ID Act. Workman is not entitled to retrenchment compensation. As per directions of Central Government, employment iin cadre of sub staff would be done through Employment Exchange only. Only when no suitable candidates are available and certificate issued by Employment Exchange Authorities, then other sources of recruitment would be considered. The Bank recruits candidates from approved panel considering the candidates sponsored through Employment Exchange. The candidates whose names appear in the approved panel would be eligible for appointment on part time basis. As per the Banker's rules, Regional Manager has to place indent with local Employment Exchange for calling candidates. When Ist party workman was not empanelled in subordinate cadre, his name was not sponsored through Employment Exchange. As such workman has not undergone selection process. 2nd party referred to ratio held in various cases and reiterates that workman engaged on casual basis is not entitled for regular service. workman is snot entitled to any relief. 2nd party also submits that workman had not produced documents about 240 days working in each of the years., workman is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Assistant General Manager, Regional Office, Dena Ban, Bhopal in terminating the services of Shri Jai Singh Solanki w.e.f. April 2004 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. Point No.1- The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was engaged on daily wages in November 1989, he was paid wages Rs.18 per day. Wages were increased upto Rs.90 per day. In 1995, one Rajendra Sharma, daily wage employee filed conciliation proceeding. Thereafter the management stopped payment vouchers in

his name. that he worked more than 240 days during past 10 years as peon. He was also doing work of domestic service and various kinds of work in the Bank. In April 2004, his services were terminated without notice, retrenchment compensation was not paid to him, since termination, he is unemployed. In his cross examination, Ist party workman says he was initially engaged by Branch Manager Shri Sarath in December 1989. The post was not advertised. He had obtained letter from Employment Exchange. Said letter was not showing the date of interview. In 1989, when he was engaged in the branch, permanent daftary was working. He denies that he was engaged as per exigency during leave period of permanent staff. Workman was unable to tell whether he was paid wages at collector rate. His wages were increased from Rs.80 to Rs.90 per day. For 1 ½ year, he was paid wages obtaining his signature. Thereafter the wages were not paid in his name. he produced 150 documents in support of his claim. He was also working at residence of Branch Manager. Branch Manager Sarath was working in the branch for 4 years. He worked during tenure of Branch Manager Dalal. He was not paid separately for domestic work. He did not remember whether he filed proceeding for recovery of gratuity amount before RL Bhopal. Draft of Rs.25000 was sent to him as per order of Labour Commissioner. He claims ignorance about filing of appeal. He again says he did not received amount of Rs.25000. in his further cross, workman says loan of Rs.50,000 was granted for his marriage by Branch Manager, Meena. He signed documents for loan telling that amount of loan be spent for marriage expenses and loan taken from other staff members. He produced receipts about purchase of grossery articles for loan purpose. The amount of Rs. 46000 of loan account is outstanding against him. He was unable to tell how many days he worked till 1989. He denies that he filed proceeding to avoid payment of loan amount.

7. Management filed affidavit of Shri Vijay Shrivastava supporting contentions in Written Statement. Management's witness says Ist party workman was not appointed following recruitment process. His name was not entered in muster roll. In order to ensure smooth customer service, branch Manager used to engage local labours for casual nature of job on daily wages. Workman as paid daily wages for days of engagement at rate declared by Collector. That workman never worked in Ratlam branch during '989 to 2004. Workman was sanctioned loan of Rs. 50,000. He defaulted in reinstatement of loan amount. Recovery proceeding was initiated against him. Workman had filed proceeding for recovery of gratuity amount before Controlling Authority. Management had filed appeal against order passed by Competent Authority. The amount ordered to be deposited by Bank was ordered to be refunded by Appellate Authority. Management's witness in his cross examination says circular Exhibit M-7 was not obligatory to be complied. Ist party workman was not engaged with permission of higher authorities. Appointment letter was not issued to him. His attendance register was not maintained. Branch Manager was paying wages in cash. Signature of workman was not obtained on payment voucher. Management's witness admitted zerox copies of payment voucher Exhibit W-6/1 to 29. Ist party workman was not paid retrenchment compensation. Termination notice was not issued to him.

8. Certainly burden lies on workman to prove he worked more than 240 days preceding 12 months of his termination. Evidence of workman and management's witness is against oath. Evidence of workman is corroborated by documents Exhibit W-1(a to c), those payment vouchers pertain to period 6-1-90, 21-1-90, 24-4-90, 3-5-90, 5-5-90, 12-5-90 & 19-7-90. As per pleadings and evidence of workman, his services were terminated in April 2004. Those payment vouchers do not pertain to May 03 to April 04 i.e. 12 months preceding termination of workman. Exhibit W-3 is reply submitted by management before RL. Management contented that Attendance Register for period 1-1-97 to 30-12-99 were not bearing signature. Payment vouchers of period 03 to 04 pertain to payment for cleaning, sweeping etc. work. Management's witness admitted Exhibit W-6/1 to 30. In all those payment vouchers, name of workman is not written. Evidence of management's witness is not disclosing that any other employee was working on daily wages in the Bank. Regular peon or daftary cannot be paid by said vouchers. In my considered view, payment vouchers Exhibit W-6/1 to 30 are produced before RLC supports evidence of workman that he was paid wages under those vouchers. The vouchers W-6/1 to 6/30 pertain to the period January 03 to Feb 04. Amounts of Rs.480, 560, 400, 320, 240, 425 is paid as Sundry Expenses. The period of working is also shown in vouchers. The payment is made to the Branch Manager. Branch Manager is not examined. Management's witnesses who filed affidavit of evidence was not working in the branch during 19889 to 2004. Considering payments made under above vouchers, the evidence of workman is corroborated that he was paid amount under Sundry expenses.

9. Shri A.K.Shashi for management relies on ratio held in

Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F of ID Act held facts must be proved by workman to claim protection under Section 25-F. that their existed relationship of employer employee, is a workman under Section 2(s) of ID Act, establishment in which he is employed is an industry, he has put not less than one year continuous service.

Evidence discussed above establish all above conditions. There is no dispute that 2nd party is covered as industry and evidence of workman shows that he was working on daily wage casual labour. Ratio held in the case supports the claim of workman.

10. Shri A.K.Shashi also relies on ratio held in case of

Oshiar Prasad and others versus employers in relation to management of Sudamdih coal washery of BCCL, Dhanbad reported in 2015-I-LLJ-513(SC). Their Lordship held no enquiry can be made on questions not specifically referred to Tribunal while answering reference- services of appellants terminated long back prior to making of reference, appellants not in services of either contractor or BCCL on date of making reference in question, no Industrial Dispute existed or apprehended in relation to appellant's absorption in services of BCCL on date of making reference.

The reference pertains to termination of legality of services of workman. In above cited judgment, their Lordship allowed appellants entitled to claim retrenchment compensation.

The facts of present case are not comparable. While dealing with the question about granting compensation or reinstatement would be considered while dealing with Point No.2.

11. The evidence discussed above is clear that workman had completed 240 days continuous service, his services were terminated without notice, workman was not paid retrenchment compensation, termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

12. Point No.2- In view of my finding in Point No.1 termination of services of Ist party is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. The evidence of workman is clear that he was engaged on daily wages, he was not appointed following selection process. On the point, learned counsel for management Shri A.K.Shashi relies on ratio held in

M.P.State Agro Industries Development Corporation Ltd and another versus S.C.Pandey reported in 2006(2)SCC-716. Their Lordship dealing with right to regularization in respect of casual temporary employees held only because temporary employee on completion of 240 days continuous service by itself would not confer any legal right upon him to be regularized in service. their Lordship further held if the appointment is made contrary to provisions of the statute, the same would be void and effect thereof would be that no legal right could be derived by the employee by reason thereof.

Reliance is also placed in case between

Jagbir Singh versus Haryana State Agriculture Marketing Board and another reported in 2009(15)SCC-327. Their Lordship dealing with reinstatement award of back wages doesnot follow automatically pursuant to setting aside of order of retrenchment passed in violation of Section 25-F of ID Act reinstatement with full backwages in case of illegal retrenchment of daily wager not proper. Instead compensation be awarded.

In present case, workman was engaged on daily wages, he was not appointed following recruitment process. Considering the nature of engagement and his services is terminated in violation of Section 25-F of ID Act, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the Assistant General Manager, Regional Office, Dena Ban, Bhopal in terminating the services of Shri Jai Singh Solanki w.e.f. April 2004 is legal and proper.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 9 फरवरी, 2017

का.आ. 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 188/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-17012/114/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 188/2014) of the Central Government Industrial Tribunal/Labour

Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Life Insurance Corporation of India and their workman, which was received by the Central Government on 07.02.2017.

[No. L-17012/114/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 31st day of January, 2017

INDUSTRIAL DISPUTE No. 188/2014

Between :

Sri Ch. Madhukar,
H.No.10-1258, Govindarajulagutta,
Girmajipet, Warangal

...Petitioner

AND

1. The Zonal Manager,
LIC of India, Zonal Office,
Opp. Secretariat, Saifabad, Hyderabad-500 004.
2. The Branch Manager,
LIC of India, Hanamakonda Branch,
Hanamkonda. Warangal district.
3. The Sr. Divl. Manager,
LIC of India, Divl. Office,
Balasamudram, Hanamkonda
Warangal district

...Respondents

Appearances :

For the Petitioner : M/s.. Sarosh Bastawala, Arun Kumar Hotkar & Amreen Fathima, Advocates

For the Respondent : Sri K R L Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/114/ 2014-IR(M) dated 21.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India, Zonal Office, Hyderabad/Divisional Office, Hanamakonda, Warangal Dist. and Branch Office, Hanamakonda, Warangal Dist. in terminating the services after crossing 240 days continuous service of Sri Ch. Madhukar, Ex-Temp. Substaff LIC of India, Divisional Office, Karimnagar Br. w.e.f. 1.2.2013 is justified or not? If not, to what relief the applicant is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 188/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. But the Petitioner failed to attend this Tribunal which clearly indicates that the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 31st day of January, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 फरवरी, 2017

का.आ. 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 6/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-17012/142/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Life Insurance Corporation of India and their workman, which was received by the Central Government on 07.02.2017.

[No. L-17012/142/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 31st day of January, 2017

INDUSTRIAL DISPUTE No. 6/2015

Between :

Sri G. Koteswara Rao,
S/o G. Venkateswara Rao,
D.No.3-29-8/, 4th Lane,
Pedda Cheruvu, Narasaraopet(P.O. & M),
Guntur District

...Petitioner

AND

1. The Sr. Divisional Manager,
LIC of India, Divisional Office,
Kennedy Road, Machilipatnam-521001.

2. The Branch Manager,
LIC of India, Narsaroapet Branch,
Guntur

...Respondents

Appearances:

For the Petitioner : None

For the Respondent: Sri K R L Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/142/ 2014-IR(M) dated 22.1.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, and their workman. The reference is,

SCHEDULE

“Whether the removal from service of Sri G. Koteswara Rao, Ex-Temp. Class.IV LIC of India, Narasaraopet Branch w.e.f. 25.1.2013 is legal and justified? If not, what other relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 6/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of service of notices to the address given in the reference order, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. But the Petitioner failed to attend this Tribunal which clearly indicates that the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 31st day of January, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 फरवरी, 2017

का.आ. 380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी. आई.एस. ब्यूरो फैसिलिटी सर्विसेस प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 07/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-30025/2/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2015) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. CIS Bureaus Facility Services Private Limited and their workman, which was received by the Central Government on 07.02.2017.

[No. L-30025/2/2017-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 31st JANUARY, 2017**PRESENT : Shri V S RAVI, Presiding Officer****ID No. 07/2015****I Party**

Sh T.K. Balasubramanian,
S/o Sri T.R. Krishnamurthy (late),
5-43, Angara Gundy,
New Mangalore – 575011

II Party

The Director,
CIS Bureaus Facility Services
Private Limited, Plot No. 13,
Simhapuri Colony, Near AOC Gate
Road, West Maredpally,
Secunderabad – 500025

AWARD

1. The brief details mentioned in the Claim Statement of the I Party are as follows:

The I Party has been originally appointed as a security at ATM HPCL Outlet Panambur, Mangalore under the II Party on January 2014, and he has continued to work from January 2014 to September 2014. Suddenly, the II Party has terminated the service of I Party, without any valid reasons. The I Party is, without any employment and income and his entire family is dragged into the street. Therefore, the I Party prays to direct the II Party to reinstate I Party into SBI ATM Panambur, Mangalore security services, with continuity of service and also with back wages and other consequential benefits, in the interest of justice.

2. The crucial point that arises for consideration in the present matter is, as follows:-

‘Whether the action of the II Party, namely, CIS Bureaus Facility Services in dismissing the services of I Party/Sh. T.K. Balasubramanian is justified? If not, to what relief, the I Party is entitled to get?’

3. Analysis, Discussions And Findings with regard to the above mentioned point:-

The WW-1 namely, Sh. T.K. Balasubramanian has specifically deposed in his evidence that, he has been terminated by II Party from the employment without any valid reason and the I Party is, without employment and income and his entire family is dragged into the street. Further, the I Party namely WW 1 has field Ex W-1 to Ex W-5. Further, as per Ex W-1, I Party has filed the copy of the covering letter issued by the Authority under the Minimum Wages Act, 1948 and Regional Labour Commissioner (Central) dated 22.12.2014 and as per Ex W-2, the I Party has produced the order passed by the Authority under the Minimum Wages Act, 1948 and Regional Labour Commissioner (Central) dated 14.01.2015, and as per Ex W-5, the I Party has produced the ID card issued by the II Party to the I Party.

4. On a careful perusal of material records, it is seen that RPAD notices have been sent to the II Party in Transaction No. A RK345402064 IN dated 02.12.2016 and in and A RK326907745 IN dated 21.09.2016, and served postal acknowledgment, also, received, regarding the RPAD notice served to II Party by this Court through Department of Post, Government of India. Still, no representation has been made by II Party and II Party also called absent.

5. Further, in the Judgment reported in [2001-11-LLJ-1087] (By The Honourable Supreme Court Of India) (By the Honourable Five Judges Bench) (Honourable Mr. Justice B.N. Kirpal, Mr. Justice Syed Shah Mohammed Quadri, Mr. Justice M.B. Shah, Ms. Justice Ruma Pal, Mr. Justice K.G. Balakrishnan) (in the case of Steel Authority of India Ltd. and Others Vs National Union Water Front Workers and Others) it is clearly observed as follows:- “HELD: A beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the Legislature has not provided whether expressly or by necessary implication or substituting remedy or benefits for that provided by the Legislature. When the concept of automatic absorption of contract labour as a consequence of issuing notification under section 10(1) by the appropriate Government is not alluded to either in Section 10 or at any other place in the Act and the consequences of violation of Sections 7 and 12 of the Contract Labour (Regulation and Abolition) Act is explicitly provided in section 23 and 25 of the Contract Labour (Regulation and Abolition) Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in sections 23 and 25 a different sequence, be it absorption of contract labour in the establishment of principal employer or a lesser of the statue will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. It is difficult to accept that Parliament intended absorption of contract labour on issue of abolition

notification under section 10(1) of the Contract Labour (Regulation and Abolition) Act. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the service of the contract labours in the concerned establishment subject to the conditions as may be specified by it for that purpose”.

6. On the careful and complete scrutiny of the materials on record it is found that the I Party is entitled to get relief as prayed for in the claim statement. Further, II party has not established that the termination of the service of the I party has been done, after following the appropriate rules and regulations. In such circumstances, it is found that the I Party is entitled to get relief as prayed for.

Hence, the following Award is passed by this Tribunal.

AWARD

The II Party is not justified in dismissing from the service the I Party/Sh T.K. Balasubramanian, as a Security at ATM, panambur, Mangalore and the II Party is directed to reinstate the I Party, into the Security Service, with continuity of service, and also, with back wages and other consequential benefits that he would have received in the absence of the impugned dismissal from the service, and the present reference is ordered, accordingly, without cost, for the above mentioned peculiar facts and special circumstances.

(Dictated, transcribed, corrected and signed by me on 31st January, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I Party

WW-1 Sh. T.K. Balasubramanian, I Party

Documents Exhibited on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	22.12.2014	Covering letter issued by The Authority under the Minimum Wages Act and Regional Labour Commissioner (Central)
Ex W-2	14.01.2015	Order passed by The Authority under the Minimum Wages Act and Regional Labour Commissioner (Central)
Ex W-3	22.12.2014	Covering letter issued by The Authority under the Minimum Wages Act and Regional Labour Commissioner (Central)
Ex W-4	14.01.2015	Order passed by The Authority under the Minimum Wages Act and Regional Labour Commissioner (Central)
Ex W-5	-	ID card copy issued to I Party

नई दिल्ली, 9 फरवरी, 2017

का.आ. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हुट्टी गोल्ड माइन्स कं. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-43012/1/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Hutti Gold Mines Co. Ltd. and their workman, which was received by the Central Government on 07.02.2017.

[No. L-43012/1/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 30th JANUARY 2017**PRESENT : Shri V S RAVI, Presiding Officer****CR No. 40/2012****I Party**

Sh Shaik Mehaboob,
S/o Md. Yusuf, T No.485,
Garage Dept., Near Biyabani Area,
Rest Camp Randa,
WADI - 585225

II Party

The Executive Director,
Hutti Gold Mines Co., Ltd.,
Hutti – 584115
Raichur District.

AWARD

1. The Central Government vide Order No. L-43012/1/2012-IR(M) dated 21.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of M/s. Hutti gold Mines Co. Limited (HGML) in recording date of birth on the basis of age declaration of the workman Sri Shaik Mehaboob is legal and justified? What relief the workman is entitled to?”

2. The 1st party has been appointed on 01.01.1974 with the 2nd Party Management and has put up 36 years of service with the 2nd Party company and he has prayed for altering the Date of Birth as 01.06.1957 instead of the Date of Birth already fixed as 01.01.1954 on the service records.

3. The 2nd Party has stated that on 20.12.1973 the 1st Party has submitted his application that he is an illiterate and the 2nd Party has fixed the Date of Birth of 1st party as 01.01.1954 on the service records as per the certificate issued by the chief Medical Officer, which has also been accepted by the 1st Party, and the case filed by the 1st Party for altering his Date of Birth before the Court of Judicial Magistrate First Class, Lingasugur in the year 2007 has been dismissed. Further the appeal filed by the 1st party has also been dismissed by Civil Judge Senior Division, Lingasugur on 19.08.2009 in RA No.39/2008. Further, the 1st Party has already retired from the service of 2nd Party Company on 31.12.2013 and, at the very end of the career, the 1st Party is not entitled to raise the present dispute regarding his Date of Birth. Hence the 2nd Party has requested to reject the reference.

4. The pertinent point that arises in the present matter is as follows:- Whether the action of the 2nd Party in recording the Date of Birth of the 1st Party as 01.01.1954, is proper, legal and justified? To what relief the 1st party is entitled to get?

5. Analysis, discussing, findings with record to the above mentioned point:-

MW1, namely the Manager (HR), of 2nd party has categorically stated that the 1st Party has been appointed on 01.01.1974, and based upon the certificate issued by the Chief Medical Officer, the age of the 1st party has been recorded as 20 years as per Ex-M1 Application Form submitted by the 1st Party dated 20.12.1973 and also in the Form 2, the age of the 1st Party, recorded as 20 years as on 20.12.1973.

6. Further, the Counsel for the 2nd Party, M/s. M R C Ravi, Sudhakar. B and Shilpa A.N, pointed out that, as per Ex-M2, the learned Civil Judge, Junior Division, Lingasugur vide Judgement dated 04.09.2008 delivered in OS No.86/2007 has dismissed the suit filed by the 1st party, herein to alter Date of Birth and further M1 has clearly stated in his evidence that the appeal filed by the 1st Party herein has been dismissed on 19.08.2009 in RA No.39/2008. Further, in the Counter statement the 2nd party has clearly stated in Para 8 as follows:- The Hon’ble Supreme Court in Hindustan Liver Ltd Vs. S M Jadav and another reported in 2001 (1) SCC pg 639 has held that. “raising dispute regarding altering the Date of Birth, at the fag end of the career or after retirement is not permissible.” And also, in Mysore Sugar Company Vs. Mohanraj reported in 2002 (1) LLN PG 283, the Hon’ble High Court of Karnataka has held that, “Opinion of Medical Board cannot be challenged after a lapse of time over thirty years when employee himself had accepted it.” In the present case also, it is seen that the 1st party is trying to raise the dispute regarding, altering the Date of Birth at the fag end of the career, or after his retirement and hence it is not permissible, factually and also, legally.

7. Further, on the careful perusal of records it is found that RPAD sent to the 1st party, in transaction ID NO. A RK114439418IN dated 25.03.2013 has been returned, with the endorsement, that the 1st Party has refused to receive the same and hence returned to the sender. Further, there is also the received acknowledgment sent by this Court on 28.12.2012 by RPAD to the 1st Party. If really the 1st Party is having any objection to the specific stand taken by the 2nd Party, then, the 1st party would have been made appearance before this Court and also should have submitted his submission to this Court. On the other hand the 1st party has not made any appearance to the Court, without any sufficient and adequate reasons, though relevant opportunity has been given by this Court. At the same time, the 2nd party has clearly established that the 1st Party is not entitled to get any relief and the request of the 1st Party, regarding altering the Date of Birth of the 1st Party at the fag end of his service, is not proper and also not legal. Thus, the point is answered accordingly.

AWARD

In the result, the action of the management of M/s. Hutti gold Mines Co. Limited (HGML) in recording date of birth on the basis of age declaration of the workman Sri Shaik Mehaboob is legal and justified. The reference is answered, accordingly, without costs, for the above mentioned peculiar facts and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 30th January, 2017)

V. S. RAVI, Presiding Officer

Witness :

MW1 05.01.2017 Sh. Yamunarappa, Manager (HR)

Documents exhibited on behalf of the II Party :

Sl. No.	Exhibit	Date	Description of Document
1.	Ex.-M1	20.12.1973	HGML Application Form and Form 2
2.	Ex.-M2	04.09.2008	O.S. 86/07 Judgment Copy
3.	Ex.-M3	19.08.2009	RA No. 39/08 Judgment Copy.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 102/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-29012/29/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Mysore Minerals Ltd. and their workman, which was received by the Central Government on 07.02.2017.

[No. L-29012/29/2007-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 31st JANUARY 2017

PRESENT : Shri V S RAVI, Presiding Officer

CR No. 102/2007

I Party

Sh. L.S. Puttaraju,
S/o Siddegowda, Lingapur Village,
Bageval Post, Gandasi Hobli,
Arasikere Taluk,
Hassan District.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

AWARD

1. The Central Government vide Order No.L-29012/29/2007-IR(M) dated 21.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri L.S. Puttaraju w.e.f. 28.08.1998? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party respectfully submits that on 01.07.1986, I Party joined the service of the II Party Management at its Mining Unit viz., Haladahalli Mines and Later on, transferred to Bhaktharahalli Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker under Token No. 119. At the time of joining the service on 01.07.1986, the I Party had furnished his age as 22 years i.e., his date of birth being 01.07.1964 as per the Horoscope maintained by his parents as per the family tradition and custom. The said date of birth infact has been entered in all the statutory records like EPF, B-register and Service records, etc. The I Party is entitled to continue in the service with the II Party upto 01.07.2023 i.e., upon reaching the age of superannuation i.e, 58 years in the II Party Organization. The II Party by eye wash conducted the so called illegal Medical Examination for the purpose of removing the I Party from the service before reaching the age of superannuation. Further, on 28.08.1998 the II Party, Bhaktharahalli Mines Officials, orally refused to allow the I Party to do his work w.e.f 28.08.1998 on the plea that the I Party has reached his superannuation age of 58 years as per the so called illegal Medical Examination. After illegal termination the I Party has faced unemployment problem and financial hardship, not only by him but also his family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon'ble High Court of Karnatataka, viz., Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon. On account of the illegal payment and other lapses, in the II Party Management, it has to face administrative problems. The II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods and also, in an illegal and irregular manner by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them enmasse by resorting to so-called Medical Examination during the year 1998 in illegal and irregular manner, without disclosing the true fact, to the I Party and also without notifying the so-called Medical Examination result and kept the I Party in dark, to the utter shock and surprise and also, to the detriment of his interest. Medical Examination has been conducted at the rate of 100 Mining Workers per day i.e, one doctor examined the Mining Workers. The II Party used the above illegal, imaginary, hypothetical and unscientific Medical report as its tool for unilaterally deciding the age of I Party and other workers. The I Party is hale and healthy and entitled to work upto 01.07.2023. Hence, the so-called Medical Examination conducted by the II Party is illegal, and also irregular and the same is not having any legal sanctity and not sustainable in law as it is violative of Rule 29-C. The I Party has repeatedly requested the officials of the II Party to provide the work to him till reaching the age of superannuation i.e., till 01.07.2023. The II Party un-necessarily created hardship to the I Party by not providing employment. The II Party Management is not justified in retrenching the I Party services w.e.f. 28.08.1998 in summary manner without following to the principals of Natural justice and fair play. Further, apart from the violation of various provisions of the I.D. Act as stated above, the II Party violated its own Certified Standing Orders. The II Party acted contrary to its own Certified Standing Orders/Service Rules for effecting the premature superannuation by way of illegal termination. The I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also a illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party for the injustice done by the II Party. The I Party is facing financial hardship and mental agony due to stoppage of his monthly earnings in the II Party organization and also, due to illegal termination. Also, the I Party is not able to maintain himself and his family with day to day, food and basic needs. The I Party has faced the financial hardship to reach the Labour Department like Assistant Labour Commissioner and Conciliation Officer (C), Hubli from his place, for raising the dispute and also, to set right his

grievances. Ultimately with great hardship, mental agony and with the help of well wishers, the I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli on 04.06.2006. The I Party is entitled for back wages, continuity of service and other consequential benefits from the date of refusal of employment w.e.f. 28.08.1998. The II Party violated the I.D. Act as well as its own Certified Standing Orders/Service Rules as stated above. Under the I.D. Act there is no limitation prescribed for raising the dispute and the Article 137 of Schedule to the limitation Act is not applicable to proceedings under I.D. Act. Therefore, the I Party prayed this Court to pass an award holding that the action of the II Party Management is not justified in terminating the services of I Party, namely, premature superannuation of the I Party services w.e.f 28.08.1998 and also to direct the II Party to reinstate the I Party, with continuity of service, with payment of Full back wages and other consequential benefits from the date of termination i.e., 28.08.1998 till providing employment/reaching the age of superannuation as per B-register and EPF records and Service records maintained by the II Party and EPF Authorities and pay the interest at the rate of 18% from the said due date up to the date of payment and further award of cost of the present proceedings, in the interest of justice and also, equity.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that the dispute raised by the I Party is totally perverse, frivolous and misconceived, and there is no merit in the dispute, in question, raised by the I Party. The success of co-workers of I Party in W.P. No. 5615/2001 and 26101/2001 before Hon'ble High Court of Karnataka, inspired, the I Party to file this dispute after lapse of 10 years. The I Party who has waited for the result of co-worker before Court of law, cannot be permitted to approach Court at the inspiration of success of co-worker. The said expert team have examined the I Party and found the incapacity to work in the mine, in view of the fact that the I Party, aged more than 58 years as on the date of Medical Examination. Further, there is no relationship of employer and employee existed between I Party and II Party as on the date of preferring the reference. Hence, the reference is made without authority of law and without jurisdiction, and as such the dispute deserves to be dismissed on the said ground alone. Further, there is no I.D existed or is apprehended. There is no irregularity or illegality in the said medical examination. Therefore, the question of continuation of service and payment of back wages does not arise at all. In fact, the I Party is employed elsewhere and earning salary. The II Party has not acted illegally or arbitrary.

4. The pertinent point that arises for consideration in the present matter is:-

“Whether the II Party is justified in terminating service/premature superannuation service of I Party w.e.f 28.08.1998? If not, to what relief the I Party is entitled to get?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

On behalf of II Party, MW -1 Assistant Manager of II Party, has been examined as MW-1. MW-1, has categorically admitted in his evidence that the I Party joined the service of the II Party on 01.07.1986, and at the time of joining the service, the I Party has furnished the Date of Birth as 01.07.1964 as per the Horoscope maintained by his parents. Hence, it is crystal clear that, at the time of joining, the II Party has taken the Date of Birth of I Party as 01.07.1964 and the same has been entered in the registers with the Date of Birth of I Party as 01.07.1964. Further, MW-1 has admitted that as per the Expert Medical Examination report, the II Party/Management took the decision to terminate the service of I Party on 28.08.1998. Also, MW-1 has admitted that having suffered the loss, the management thought of reducing number of workers and MW-1 has not produced the Medical Certificate issued by the Doctor who has examined the I Party's health condition and the doctors have not conducted the Medical Examination in his presence and MW-1 has clearly admitted that I Party has not been issued with charge sheet and no enquiry has been conducted before the termination of his service and there is statutory records, and service records, like B-Register and also EPF records. Accordingly, I Party has clearly stated in claim statement and his evidence that, the Date of Birth of I Party has been registered as 01.07.1964 and suddenly, with a view to reduce the workers, the II Party has terminated the service of the I Party, illegally and also arbitrarily with malafide intention.

6. Further, MW-1 has categorically admitted in his evidence that, I Party is an illiterate person and II Party has not furnished to the I Party, the Kannada version/translation of Medical Certificate which is in English and MW-1 does not know what is the age of the I Party as assessed by the Medical Officer and in what respect the Medical Officer opined that the I Party is medically unfit and as per Ex W-4, details the superannuation age of employee has been enhanced from 58 years to 60 years. Further, MW-1 has admitted that as per the clause 18 and 24 of the certified standing order, any termination has to be followed by enquiry, along with 3 months notice pay and along with the termination order issued to I Party the said 3 months salary has not been paid. On that ground also it is seen that the II Party has not followed the proper procedure in terminating the service/premature superannuation of I Party w.e.f 28.08.1998. Further, MW-1 namely the Assistant Manager of II Party has specifically admitted in his evidence that Writ petition No. 5615/2001 and Writ Appeal No. 3460/2001 clubbed with 3459/2001 and 2610/101 orders have been passed as per Ex W-1 to Ex W-3. In the claim statement the I Party has rightly pointed out that certain co-workers have challenged the premature retirement and the Writ Petitions have been allowed and Writ Appeal has been dismissed and in view of the said order, the II Party has reinstated the prematured employees with payment of back wages and also with

continuity of service thereon. Being the illiterate worker, as clearly admitted by MW-1 himself, the I Party has repeatedly requested the II Party to reinstate the I Party into service and after the failure, he has approached Labour Authorities and the reference has been made to this Court by the Labour Authorities.

7. Further, it is specifically pointed out by the I Party in the claim statement that there is no limitation for raising the dispute and the said point is repeatedly decided by the Hon'ble Supreme Court of India and Hon'ble High Courts of various states namely,

- (i). LLJ-II-2001-pg788-792 [SC], Sapan kumar Pandit Vs U.P. State Electricity Board and others.
- (ii). LLJ-I-1999-pg 1260-1265 [SC], Ajaib Singh Vs Sirhind Co-operative Marketing-cum-processing Service Society.
- (iii). LLJ-II-1999-pg-482-483[SC], Mahavir Singh Vs U.P. State Electricity Board and others.
- (iv). LLJ-I-2003-pg 412-414 [MP], Ramadhar Tiwari Vs Union of India and others.

8. Further, in the claim statement, the I party has clearly pointed out that he is hale and healthy and entitled to work upto the age of superannuation. Further, in the counter statement the II Party has stated that, I Party is happily working elsewhere, since from the date of his termination and also earning salary. However, in the claim statement as well as in evidence the I Party has specifically stated that, the I Party is facing financial hardship and mental agony, due to the stoppage of his monthly earnings from the II Party Organisation, and even the I Party is not able to maintain himself and his family with day to day, food and basic needs. The II Party has not established that the I Party is happily working elsewhere from the date of his termination and also earning salary.

9. Above all, it is already held by the Hon'ble High Court of Karnataka, in the above mentioned Writ Petition and also in Writ Appeal that the present II Party cannot alter the Date of Birth of the workers based on the unreliable medical reports, and in fact in Writ Petition No. 26101/2001 the Honourable High Court has clearly held as follows:-

“For no fault of the petitioners (workmen of II Party herein) they are driven to this Court by the capricious acts of the respondents. Therefore, I impose a cost of Rs. 1,000/- on the respondents payable to each of the petitioners within 4 weeks from today. The Writ Petitions are accordingly, allowed”.

In the Writ Appeal also, as per Ex W-2, it is clearly held “Merely on the opinion of the doctor, age cannot be changed which is already entered in the service records.” For the above, mentioned reasons, it is found that, the I Party is entitled to get relief as prayed for in the claim statement, on the factual reasons and also, legal grounds. Accordingly, the following award is passed.

AWARD

The II Party is not justified in terminating the service/premature superannuating of the services of I party/Puttaraju w.e.f 28.08.1998 and II Party is directed to reinstate the I Party with continuity of service, and with payment of full back wages and other consequential benefits from the date of termination, namely, 28.08.1998 till providing employment as per the service records maintained by the II Party and EPF authorities and award is passed accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 31st January, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party :

MW1 Sh. L.S. Puttaraju, I Party

List of Witness on the side of II Party :

MW1 Sh. Somanna, Assistant Manager

Exhibited marked on behalf of the I Party :

Exibits	Date	Description of Document
Ex.-W1	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
Ex.-W2	12.06.2002	Writ Petition No. 3460/01 C/W W.A. No. 3450/01 (S) order
Ex.-W3	01.06.2006	W.P. No. 26101/01 order
Ex.-W4	22.08.2008	Letter relating to enhancing the superannuation age from 58 years to 60 years

Exhibited marked on behalf of the II Party :

Exibits	Date	Description of Document
Ex.-M1	-	Register of Employees.

नई दिल्ली, 9 फरवरी, 2017

का.आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोकारो इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-43011/10/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Bokara Steel Plant and their workman, which was received by the Central Government on 07.02.2017.

[No. L-43011/10/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10 (1)(d) (2A) of I.D.Act, 1947

Reference No. 36/2012

Employers in relation to the management of M/s.. Bokaro Steel Plant

And

Their workman

Present : Shri R.K.Saran, Presiding Officer**Appearance :**

For the Employers : Shri D. Mukherjee, Advocate

For the workman : Shri P.R. Rakshit, Advocate

Industry :- Steel

Dated : 25/01/2017

AWARD

By order No. L- 43011 /10/2011-IR (M) dated 21/ 05/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub – section (1) and sub – section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Bokaro steel Plant ,SAIL in terminating the services of Sri Baghu Gorain on account of premature superannuation on 31/05/2008 is legal and justified? What relief the workman is entitled to?”

2. The case is received from Ministry of Labour on 30.05.2012. The workman files their written statement on 06.08.2012. But the management files their written statement on 09.01.2013. Thereafter rejoinder and documents filed by the parties. One witness from each side has been examined. Documents of the management marked as M-1 to M-6 and documents of workman are also marked as W-1 to W-6 as well as one document also marked by court as C-1.

3. The case of the workman is that Sri Baghu Gorain has been wrongfully terminated from the services of the company by their order No. 23354/R dated 23/27.02.2008 when he has legal right to serve the company 28.02.11. Therefore the termination of the concerned workman under the clock of premature retirement is illegal, improper and unjustified. The workman Sri Baghu Gorain hail from the lowest rung of the society and by being a displaced person

he was appointed by the company on 02.05.1968 in the traffic department of Bokaro Steel Plant. And he was subsequently confirmed in the service.

4. It is also submitted by the workman that in the matter of Recording of age at the time of employment, the company has its rule in the certified standing orders vide clause 8(3) of the L.S.D and the concerned workman having no educational qualification he declared his date of birth as on 14.02.1951 which was accepted by the company conforming the provision of the certified standing order. Therefore the date of superannuation of the workman falls on 28.02.2011. The workman was also medically examined by the Board constituted by the management for assessment of his age and the report of the medical Board relied with the age declared by the workman concerned. As such the assessment of the Medical Board is being final.

5. It is further submitted by the workman that such documents were tampered with by the management which was against the benefit of the workman. However for the first time, from a notice dated 23/27.02.2008 issued by the management, the workman could learn that he would be superannuated from the services w.e.f 31.05.2008.

6. Thereafter the workman made an application against his so called postulated terminated but it was not replied to and the workman was illegally and unjustly terminated w.e.f 31.05.2008 under the cloak of retirement which is ex-facie premature. Hence Industrial dispute arose.

7. On the other hand the case of the management is that the concerned workman was appointed on 08.05.1968 and at the time of appointment, the concerned workman declared his age as 20 years as on the date of joining on 08.05.1968. He was also examined by the medical officer and declared his age 20 years on the date of appointment of the concerned workman.

8. It is also submitted by the management that he was also declared his date of Birth in personal data form, Attestation form, Description Roll etc. as 08.05.1948 and all the documents bear his signature as acceptance of his declaration. In the application for Gratuity he was also declared his age as 08.05.1948 as well as nomination for P.F under rule-7 he was also declared his age as 08.05.1948. Hence he was legally superannuated from service w.e.f. 31.05.2008.

9. It is further submitted by the management that during the tenure of service the concerned workman never raised any dispute regarding his age and after superannuation the concerned workman received all retirement benefits as on this score also the present dispute is not maintainable and he raised the dispute after the superannuation as such this reference is not legally maintainable.

10. The short point to be decided in the reference is whether the workman is prematurely retired in the year 2008 and he should have been retired in the year 2011.

11. In this case both parties filed number of documents, adduce oral evidence. Admitted facts are the dispute was raised after superannuation. But from the documents filed by the parties, many documents show the Date of Birth of workman is 1951.

12. But this tribunal scrutinised the earliest documents i.e appointment letter and declaration form and medical examination report which is of years 1968. There it is mentioned the age of workman is 20 years which is marked Ext. M-2 In the attestation form at column -11, it is seen that the workman was working temporarily in South Eastern Railway from 10.01.1964 to 10.12.1966. The said document is of the year 1968 signed by workman himself that means at the age of 16, the workman started working. If it will be calculated from 1951, that will be he started his service in Rly at the age of 13 is not acceptable. The date of appointment is 1951 and joining of service in BSL is 1968 i.e only 17 years it is also not possible.

13. Moreover admissions made in the earlier i.e ancient document has more probative value. Therefore the workman has been rightly retired in the year 2008. It is also facts that during the period of service he did not raise objection regarding Date of Birth. In this matter Hon'ble Supreme Court in catena of cases held, one of this is quoted below:-

“As per civil appeal No.2331 of 2004 SC, State of MP Vs. Prem Lal Shrivastava, page 279 in which—“Court to be circumspect, cautious and careful while issuing direction for correction in date of Birth of a Govt. servant- particularly at the fag end of his career or on the eve of his superannuation – Employee cannot claim as a matter of right for correction in his date of birth even if he has good evidence.”

14. Considering the facts and circumstances of this case, I hold that the action of the management of Bokaro Steel Plant, SAIL in terminating the services of Sri Baghu Gorain on account of premature superannuation on 31/05/2008 is legal and justified. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 9 फरवरी, 2017

का.आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोकारो इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 38/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2017 को प्राप्त हुआ था।

[सं. एल-29012/11/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Bokaro Steel Plant and their workman, which was received by the Central Government on 07.02.2017.

[No. L-29012/11/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10 (1)(d) (2A) of I.D.Act, 1947

Reference No. 38/2012

Employers in relation to the management of M/s.. Bokaro Steel Plant

And

Their workman

Present : Shri R.K.Saran, Presiding Officer**Appearance :**

For the Employers : Shri D. Mukherjee, Advocate

For the workman : Shri P.R. Rakshit, Advocate

Industry :- Steel

Dated : 27/01/2017

AWARD

By order No. L- 29012 /11/2012 /IR (M) dated 04/ 06/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Bokaro Steel Plant, SAIL in deducting penal rent for occupation of Qr.No.VIIIA,-2255 w.e.f.Dec.1986 to October,1990 from the wages of Sri C.P. Agarwal, Staff No.075855 is proper and justified? and whether the action of the management of Bokaro Steel Plant SAIL in allegedly wrong fixing the scales of the said workman from 21.6.1979 till the date of VRS is proper and justified ? What relief the workman is entitled to?”

2. The case is received from Ministry of Labour on 11/24.07.2012. The workman files their written statement on 21.09.2012. But the management files their written statement on 18.01.2013. Thereafter rejoinder and document filed by the parties. One witness from each side examined on their behalf. Documents of the management marked as M-1 to M-6 and documents of workman marked as W-1to W-7.

3. The case of the workman is that the workman concerned was appointed on 24.11.1970 and one residential Qr. No. VIII-A 2255 D type allotted to him and he occupied and residing therein alongwith his family members. But the

management illegally started making deduction penal rent from the wages of workman @ Rs. 477/- per month w.e.f. June 1986 without consent of workman or without any reason.

4. The workman protested against the illegal action of the management in the matter of unlawful deduction but the management have not stopped making deduction of panel rent from the wages of the workman concerned thereafter he filed a case U/S 15 (2) and (3) before the state Labour Court B.S.City which was awarded in favour of workman and directed the management to refund the amount deducted from the wages of the workman. He also filed another case u/s 33A of the I.D.Act,1947 before the State Labour court, Bokaro, raising allegations of change of service conditions by way of denial of promotion, supersession by juniors etc. which was numbered as Misc. Case No.10/1986. and Labour court, Bokaro rendered an award in favour of the workman, granting promotion alongwith all consequential benefits.
5. The management filed a writ numbered as CWJC No.1485 of 1991 before the Hon'ble Patna High Court, Ranchi Bench and order passed in favour of the workman and directed the management to implement the Award of Labour Court and the management implemented the said Award of Labour Court. Bokaro. promotions as also making payment of the consequential benefits. But the management filed LPA against the order of the writ court which set aside, the order of the single judge.
6. Thereafter the workman filed Special Leave Petition before the Supreme Court against the order of the Division Bench of the Hon'ble High Court which was disposed of by the Supreme Court by an order that the position of Shri C.P.Agarwal should not be disturbed, as the management had already implemented the Award of the Labour court, Bokaro.
7. It is further submitted by the workman that management made deduction of penal rent from the wages of the workman alleging his unauthorized occupation of the above quarter for the period from June 1986 to 1990 to an amount of Rs.2385/-.
8. The concerned workman filed claim application before the Presiding Officer, Labour Court, Bokaro under the provisions of the Payment of Wages Act, 1936 which was numbered as P.W. Case No.22/1986. And the Labour Court passed an order dated 21.12.1988 deciding all the issues raised by the management in the above case in favour of the applicant but the management did not make payment of the amount of penal rent for the period in question but preferred an Appeal against the said order of the Labour Court, Bokaro which was numbered as Misc.Appeal No.65/1989 but the said Appeal was also dismissed by the Additional District Judge, Bokaro by order dated 13.04.2000.
9. It is further submitted by the workman that the management continued deducting panel rent w.e.f June 1986 to Oct. 1990 and the concerned workman's pay scale was also allegedly wrongfully fixed by the management from 21.06.1979 by office order dated 17/18.2.1992 and it is continued till the date of his retirement i.e his VRS which was also challenged by the workman but it was disputed by workman, hence industrial dispute arise.
10. On the other hand, the case of the management that the concerned workman is holding managerial post and as such he is not a workman,. He was initially appointed as construction supervisor w.e.f 24.11. 1970.
11. It also submitted by the management that Labour Court Bokaro passed an order in Misc. case 10/86 wherein the management is directed to promote Sri C.P.Agarwal to the post of Construction Supervisor Grad-1 w.e.f. 06.06.1977, Addl. Divisional Engineer w.e.f 21.06.1979, Divisional Engineer w.e.f. 17.02.1983 and Zonal Engineer w.e.f 30.06.1987.
12. Thereafter the management challenged the award before the Hon'ble High Court numbered as CWJC 1485/91 but during the pendency of the writ petition, the management fully implemented the award of Labour Court, Bokaro and gave all benefits including promotion and differential wages. The Hon'ble High Court quashed the award of Labour Court, thereafter he filed civil appeal No. 11547 and 11573 of 1995 before the Hon'ble Supreme Court. The Apex Court taking into consideration of promotion during the pendency of writ petition, directed not to revert workman to the lower post. Hence he received wages and other benefits more than he was entitled but still then he filed the present case being emboldened by previous facts.
13. In M.J Case No. 5/89 the claim of the applicant for refund of panel rent deducted by the management from Dec. 1986 to April 1989 which was dismissed then a writ petition filed before the Hon'ble High Court against the order of Labour Court being WP (L) No. 281/2003 which was also dismissed by the Hon'ble High Court by order dated 06.11.2007.
14. It is further submitted by the management that Sri C.P.Agarwal taking V.R.S as per management's scheme accepted all the benefits under V.R.S Scheme and as such he has no claim and he raised the dispute after acceptance of all the benefits. He illegally occupied the quarters hence the management deducted panel rent which is legal and proper. His wage was never wrongly fixed from 21.06.79 till the date of VRS thus his wages was fixed as per rule of the company by implementing the order dated 17.02.1992 of Labour Court, Bokaro. He has received more wages than he is entitled.

15. There are two point to be decided in this case that whether the deducting the penal rent from Dec. 86 to Oct.1990 and wrong fixing wages from 21.06.79 till the date of VRS is proper or not.
16. The management examined one witness namely Ranodeep Banerjee , DGM personal of Bokaro Steel says in his cross examination which is quoted below:-

Xxxx

The concerned workman joined in BSL as construction supervisor in the year 1977. The minimum qualification of the said post is Diploma Engineer. It is a technical post and in that time promotion is given . Post of Zonal Engineer is also a technical post. I am now in E-6 Grade. I have no power of appoint a workman or to dismiss him. There was a PW case of 22 of 1986 filed by C.P.Agrawal before the Labour Court Bokaro, and that case related to refund of penal rent deducted by BSL . The claim was allowed. Management filed appeal against that and lost. C.P.Agrawal did not have any power to appoint and dismiss any person. Except delegation of power, I have not filed any other document, regarding power to be exercise by official . It is not a fact that the power of delegation is prepared for this case as that has not born any signature etc. For delegation of powers, the Board of Direction approval is required. I can file papers that Board delegates power to MD and MD can delegate power to his other subordinates.

Xxxx

17. The management is objecting on maintainability of reference but this Tribunal ordered that “ it is felt proper to hear the preliminary point and the main case together” by order dated 07.08.2013 thereafter this reference is challenged by the management bearing WP(L) No. 3652 of 2013 “seeking quashing of reference order dated 04.06.2012 under section of 10 (1)(d) and 2A of I.D Act, the present writ petition has been filed . A further prayer seeking a declaration that the reference order dated 04.06.2012 made by the Central Government is not maintainable as the dispute referred therein is not an industrial dispute within the industrial Dispute Act 1947 has been made.”
18. The Hon’ble High Court passed order in writ petition WP(L) No. 3652 of 2013 , the few lines of operative portion is quoted below :-

xxxxx

“The petitioner has already filed written statement before the Industrial Tribunal and it has also preferred as application raising preliminary objection as to maintainability of the reference . An objection has been raised in the written statement that the respondent is not a “workman” under section 2 (s) of Industrial dispute Act 1947 and therefore, the reference is not maintainable. In the written statement a plea has been taken that the scale of the respondent- workman was not wrongly fixed rather it was fixed in terms of office order dated 17.02.1992. It is thus apparent that a dispute has arisen between the parties. In the written statement the petitioner-SAIL has not taken the plea as to a stale claim being referred by the Central Government vide reference order dated 04.06.2012. It has also not been averred in the written statement that the petitioner has raised the Industrial dispute so belatedly that his right has extinguished and no industrial dispute remains. Only because the promotion granted vide Award dated 17.01.1991 have been held unsustainable. It cannot be said that the claim for grant of proper pay –scale also stood denied by the Hon’ble Supreme Court and thus, there existed not industrial dispute when the reference was made. In the above facts, I hold that the claim of the respondent/ workman is not stale.

In view of the above discussion, I find no merit in the writ petition and accordingly, it is dismissed”

19. As per cross examination of MW-1, There was a PW case of 22 of 1986 filed by C.P.Agrawal before the Labour Court Bokaro, and that case related to refund of penal rent deducted by BSL.. The claim was allowed. Management filed appeal against that and lost. It is also accepted by the management witness that . C.P.Agarwal did not have any power to appoint and dismiss any person Except delegation of power, I have not filed any other document , regarding power to be exercised by official.
20. The issue of penal rent has already be decided and confirmed by appellate Authority marked as Ext. W-2. It is not res-integra now in this reference case . That apart the management implemented the said order and refunded the deduction for the earlier period of different spell at the rate of Rs. 477/- p.m. toward panel rent in respect of above quarter. This Tribunal in absence any fresh evidence and documents can not hold otherwise. That apart, the management company has not denied deduction of panel rent for the said period.
21. It is a settled position in law that under sec. 10/11A of the I.D Act 1947, the Tribunal being fact finding Court has wide power. The power of U/s. 10/11A of the I.D Act 1947 is very much wider than U/s. 33 C(2) of the I.D Act. This Tribunal has larger scope to decide this issue of wrongful deduction of penal rent for the period from Dec. 86 to Oct. 1990 as unauthorized deduction in view of the fact already found by the learned Labour Court Bokaro in PW case No.22/86. Moreover this Tribunal has to answer the reference referred by the appropriate Government.

22. Therefore the action of the management in deducting panel rent for occupation of Qr. No. VIII A 2255 w.e.f. Dec 1986 to Oct. 1990 from the wages of Sri Agrawal is improper & unjustified. Obviously, Shri Agarwal is entitled to get refund of the amount as detailed in Annexure –E attached to the Written statement of the workman, specially when the management witness has not specifically proved what violation was caused.

23. The second issue of wrong fixation is that the office order dated 17/18 .02.1992 marked as W-5 and which is also marked as M-4 as management document. On the simple look as on 01.09.1978, pay of Sri Agarwal on promotion was fixed at Rs. 881 (Revised) but surprisingly on 21.06.1979 it was reduced to Rs. 850/- on promotion in E-1 grade which ought to have been Rs. 950 on promotion to E-1 grade in the scale of Rs. 800-1400/-

24. Perusing the all material, Moreover the management in writ challenged the reference in Jharkhand High Court and writ was dismissed . Hence the Tribunal has power to decide the reference. The said judgment is also filed before this Tribunal The gist of the judgment is as the workman can not be prevent from raising in dispute to wrong fixation of his scale can not be said to be a stale claim and he is not workman has already been decided by Hon'ble High Court.and now it is clear that industrial dispute exists. Moreover the order of hon'ble High Court has not been challenged in any forum and became final. The management all though as even now has not brought on record the order of Hon'ble Court to the Tribunal which is also unfair labour practice.

25. The legal philosophy is that parties must come before the court of law with clean hands. Therefore both the point of reference answered in favour of the workman.

26. Considering the facts and circumstances of this case, I hold that the action of the management of Bokaro Steel Plant, SAIL in deducting penal rent for occupation of Qr.No.VIIIA,-2255 w.e.f. Dec.1986 to October,1990 from the wages of Sri C.P. Agarwal, Staff No.075855 is not proper and justified and the action of the management of Bokaro Steel Plant SAIL in wrong fixing the scales of the said workman from 21.6.1979 till the date of VRS is also not proper and justified. Hence he is entitled refund the penal rent and refixation wage w.e.f from 21.06.79 and that be paid him forthwith after publication of the award in the gazzatte.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 9 फरवरी, 2017

का.आ. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 34/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/33/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2014) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 09.02.2017.

[No. L-30012/33/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 34/2014

Shrei Vikram Singh S/o Shri Surak Mal
Village and PO Sekhpura Khalsa,
District Karnal,
Haryana

...Workman

Versus

The Senior Plant Manager,
Indian Oil Corporation Ltd.(NR)
Indane Bottling Plant, Kohand-Assandh Road,
Village & Post Gudham, Karnal,
Haryana 132 114

...Management

AWARD

Central Government, vide letter No.L-30012/33/2013-IR(M) dated 18.02.2014, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the contract awarded by the management of Senior Plant Manager, Indian Oil Corporation Ltd. (NR), Indane Bottling Plant, Kohand-Assandh Road, Village & Post Gudham, Karnal - 132 114 (Haryana) is a sham contract and contractor M/s. D.S. Goyal and M/s. Ramphal & Company are a camouflage? If yes, whether the demand of the workman, Shri Vikram Singh S/o Shri Suraj Kal, ex-Houlaghe workman in termination of his services with effect from 26.09.1995 by the above management was just, fair and legal ? IF not, to what relief the workman is entitled to and from which date?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute.

3. Shri Vikram Singh filed an application on 27.02.2015 pleading that an application has been filed with the appropriate Government on 21.02.2015 for transfer of the case to Chandigarh, where as 29 identical/connected disputes are pending at CGIT, Chandigarh. However, thereafter on the last three dates of hearing neither the workman nor any authorized representative on his behalf appeared before this Tribunal, clearly indicating that he is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 6, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 9 फरवरी, 2017

का.आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अवीवा लाईफ इश्योरेंस कं. इंडिया लिमिटेड के प्रबंधन के संबंध में निर्योक्तों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.02.2017 को प्राप्त हुआ था।

[सं. एल-17012/13/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 9th February, 2017

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2012) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.. Aviva Life Insurance Co. India Ltd. and their workman, which was received by the Central Government on 09.02.2017.

[No. L-17012/13/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****Present:** Shri. K. Sasidharan, B. Sc., LLB, Presiding Officer(Friday the 06th day of January, 2017/16th Pausha, 1938)**ID No. 15/2012**

Workman/Person : Shri. Jerin. T. Jose,
Thalachel House,
Kumaranalloor Post,
Kottayam,
Kerala – 686016.

By Adv. Shri C. Anil Kumar

Managements : 1. The CEO and Managing Director,
M/s. Aviva Life Insurance Company India Ltd.,
Aviva Tower, Section Road,
Opp. Golf Course, DLF Phase-V,
Section 43,
Gurgaon – 122003 (Haryana).

2. The Regional Manager(HR),
M/s. Aviva Life Insurance Co. India Ltd.,
Aashirwad Towers, 3rd Floor, Plot No.2,
Old No.182, Kodambakkam High Road,
Nungambakkam,
Chennai – 600034.

By Adv. Shri. Saji Isaac. K. J. (for Managements 1 & 2)

This case coming up for final hearing on 26.12.2016 and this Tribunal-cum-Labour Court on 06.01.2017 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication before this Tribunal is:

“Whether the action of the management of M/s. Aviva Life Insurance Company India Limited in terminating the services of Shri Jerin T. Jose in accordance with law w.e.f.27/1/2010 is legal and justified? What relief the workman is entitled to?”

3. After the receipt of reference Order No.L-17012/13/2011-IR(M) dated 14.02.2012, issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings and produce documents to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The averments in the claim statement filed by the union in brief are as follows:

The workman was employed as Sales Manager (DSF) in Kottayam branch of the management company from 25.07.2008 to 27.01.2010. The management terminated the services of the workman on 27.01.2010 without any valid reason other than ‘non-performance’ in terms of the volume of business. The management failed to consider the fact that the workman was not in a position to discharge his duties as that of a normal employee for a period of six months from and out of the twelve months period of evaluation. No opportunity was afforded to the workman to explain the factual state of affairs before terminating him from service. In spite of the repeated e-mails and letters issued by the workman, the management failed to consider his request for reinstatement. Before the conciliation officer also the management took an adamant stand that they are not ready for settling the dispute.

5. The only reason for terminating the workman by the management is improper performance evaluation. Apart from the workman several other employees were also forced to resign/terminate from the service of the management. The workman is the sole bread winner of his family. He has to look after his aged parents. The reason for termination of service from the management is neither legal nor just. Therefore the workman has requested to set aside the termination order, to reinstate him in service with continuity of service and all other benefits and to pay costs of the proceedings and compensation to him.

6. The averments in the written statement filed by the management in brief are as follows:

The management has denied all the averments in the claim statement submitted by the workman except those that are specifically admitted. The person involved in this reference is not a 'workman' as defined under the Industrial Disputes Act. As per letter dated 18.07.2008 the claimant was employed under the management in the position of sales manager. He was employed in the managerial/administrative and supervisory capacity. He is responsible for achieving and exceeding the sales targets and to manage the financial planning advisers reporting to him. He was drawing an annual salary of ₹3,50,000/-. Since the claimant was performing the duties of managerial nature and drawing the salary exceeding the limit under Section 2(s) of the Industrial Disputes Act, he will not come under the purview of 'workman' as defined under the Act. The management has requested to consider this aspect as a preliminary point.

7. Without prejudice to the contentions raised above the management has stated that the letter of appointment dated 18.07.2008 issued to the claimant contains the terms and conditions and the nature of job he has to perform under the management. The claimant accepted the terms and conditions of appointment and acknowledged the same on 21.07.2008. As per clause 14 of letter of appointment the management is at liberty to terminate the appointment by giving two months' notice in writing or paying the total fixed cost amount in lieu thereof without assigning any reason. As per this clause the management has got the right to terminate the appointment without any reason.

8. A performance enhancement programme letter dated 28.10.2009 was issued to the claimant. The contention of the claimant that the management failed to consider his request and reappreciate the matter on the basis of his submission is absolutely false. The allegations levelled against the management are absolutely false. The claimant has no right to obtain reinstatement in the management company. He is also not entitled to the relief claimed. The management has requested to dismiss the claim by the claimant.

9. After filing written statement by the management the workman filed rejoinder reiterating the contentions in the claim statement.

10. After providing sufficient opportunity to the parties to take steps and for production of documents, the matter was posted for evidence. The workman tendered evidence as WW1 and Exts.W1 to W7 are the documents marked on his behalf. The management has not adduced any oral evidence nor produced documents. Heard both sides.

11. The points arising for consideration are:

- “(i) **Whether the person involved in this reference Shri. Jerin. T. Jose will come under the purview of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947?**
- (ii) **Whether the claim put forward by the person involved in this reference Shri. Jerin. T. Jose is maintainable before this Tribunal?**
- (iii) **Whether the action of the management of Aviva Life Insurance Company India Ltd. in terminating the services of Shri. Jerin T. Jose is just, legal and proper?**
- (iv) **What relief the workman is entitled?”**

12. Point Nos.(i) & (ii):- The dispute referred for adjudication is:

“Whether the action of the management of M/s. Aviva Life Insurance Company India Limited in terminating the services of Shri Jerin T. Jose in accordance with law w.e.f.27/1/2010 is legal and justified? What relief the workman is entitled to?”

The person involved in this reference Shri. Jerin. T. Jose was employed under the management from 25.07.2008 to 27.01.2010. The management terminated his services on 27.01.2010. According to Shri. Jerin. T. Jose, the termination of his services by the management is illegal, unjust and improper. He has stated that the management failed to appreciate the matter in issue in the correct perspective. It is stated that Shri. Jerin. T. Jose was employed as sales manager (DSF) in the Kottayam branch of the management company. He challenged the termination order initially before the conciliation officer and later the Ministry referred the matter for adjudication before this Tribunal. The management has contended that the person involved in this reference namely, Shri. Jerin. T. Jose was employed as sales manager in accordance with the terms and conditions in the letter dated 18.07.2008 issued by them. According to

the management the person involved in this reference was employed in the managerial/administrative and supervisory capacity and he was responsible for achieving and exceeding the sales targets. It is stated that the person involved in this reference Shri. Jerin. T. Jose was drawing an annual salary of ₹ 3,50,000/- and as such he will not come under the purview of 'workman' as defined under Section 2(s) of the Industrial Disputes Act.

13. The learned counsel for the management has requested to consider this aspect as a preliminary point. While examined as WW1 the workman has stated that he was appointed as sales manager by the management company and his annual salary was ₹ 3,50,000/-. Apart from the salary aforesaid, he used to get sales incentive also. WW1 has admitted that as per Ext.W1 appointment order the financial planning advisers will have to report before him and he will have to clear the queries put forward by them. He has denied the suggestion that this Tribunal has no jurisdiction to entertain the dispute.

14. Admittedly the annual salary of Shri. Jerin. T. Jose was ₹ 3,50,000/-. Apart from this, he used to get sales incentives also. Ext.W1 is the appointment order dated 18.07.2008 issued by the management to Shri. Jerin. T. Jose. Ext.W1 document reveals that Shri. Jerin. T. Jose was employed as sales manager under specified terms and conditions. The nature of duty to be performed by Shri. Jerin. T. Jose as sales manager is specified in Ext.W1 document. Ext.W3 document reveals that w.e.f.01.04.2009 the salary of Shri. Jerin. T. Jose was enhanced to ₹ 3,74,500/- per annum. On going through Ext.W1 document it can be seen that Shri. Jerin. T. Jose, was employed as a sales manager under the management and he was responsible for managing the financial planning advisers reporting before him. The nature of duty to be performed by Shri. Jerin. T. Jose as per Ext.W1 document is not that of a 'workman' as defined under Section 2(s) of the Industrial Disputes Act.

15. The learned counsel for the management referred to the *Ruling reported in 1994 (5) SCC 737 H. R. Adyanthaya Vs. Sandoz (India) Limited & Ors. wherein the Hon'ble Supreme Court has held that:*

"Medical representatives do not perform duties of skilled and technical nature and, therefore they are not workmen."

In the Ruling reported in AIR 2015 SC 2275 – Chauharya Tripathi & Ors. Vs. LIC of India & Ors. wherein the Hon'ble Supreme Court has held that:

"the Development Officers working in the LIC are not workman as defined under Section 2(s) of the Industrial Disputes Act."

16. In view of the dictum laid down in the decisions referred above it is evident that the person involved in this reference Shri. Jerin. T. Jose will not come under the purview of 'workman' as defined under Section 2(s) of the Industrial Disputes Act. It follows that this Tribunal has no jurisdiction to adjudicate this dispute. Hence the points for consideration are answered against the workman and in favour of the management.

17. Point Nos.(iii) & (iv):- Shri. Jerin. T. Jose, the person involved in this reference has challenged the Ext.W5 termination order. As per Ext.W5 order the management offered notice pay for two months in lieu of notice as stipulated in Ext.W1 appointment order. While answering Point Nos.(i) and (ii) it is held that the person involved in this reference namely Shri. Jerin. T. Jose will not come under the purview of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947. In such circumstance this Tribunal has no jurisdiction to entertain the dispute involved in this reference. It follows that the person involved in this reference – Shri. Jerin. T. Jose is not entitled to the relief claimed as per the claim statement. The points are answered accordingly.

18. In the result an award is passed holding that this Tribunal has no jurisdiction to adjudicate the matter in issue for the reason that the person involved in this reference namely Shri. Jerin. T. Jose will not come under the purview of "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947. It follows that Shri. Jerin. T. Jose is not entitled to the relief claimed.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 06th day of January, 2017.

SASIDHARAN K., Presiding Officer

APPENDIX

Witness for the workman

WW1	07.12.2016	Shri. Jerin. T. Jose
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Witness for the managements

NIL

Exhibits for the workman

- W1 - Offer of appointment letter dated 18.07.2008 issued by the Head Sales HR, Aviva Life Insurance Company India Pvt. Ltd., Chicago Plaza, Rajaji Road, Cochin, Kerala to the person involved in this reference.
- W2 - Performance report and targets to be done by 04.04.2009 issued by the Head-DSF, South 3, Aviva Life Insurance Company India Pvt. Ltd., Chicago Plaza, Rajaji Road, Cochin, Kerala to the person involved in this reference.
- W3 - Letter dated 30.03.2009 issued by the Associate Director-Human Resources, Aviva Life Insurance Company India Ltd., Aviva Tower, Sector Road, DLF-Phase V, Sector 43, Gurgaon, Haryana to the person involved in this reference.
- W4 - Letter dated 28.10.2009 regarding performance enhancement programme issued by the Head – HR Operations, Aviva Life Insurance Company India Ltd., Aviva Tower, Sector Road, DLF-Phase V, Sector 43, Gurgaon, Haryana to the person involved in this reference.
- W5 - Termination letter dated 28.01.2010 issued by the Associate Director - Human Resources, Aviva Tower, Sector Road, DLF-Phase V, Sector 43, Gurgaon, Haryana to the person involved in this reference.
- W6 - Letter dated 17.02.2010 issued by the Head - HR Operations, Aviva Life Insurance Company India Ltd., Aviva Tower, Sector Road, DLF-Phase V, Sector 43, Gurgaon, Haryana to the person involved in this reference.
- W7 - Letter dated 26.05.2010 issued by the Authorized Signatory, Aviva Life Insurance Company India Ltd., Aviva Tower, Sector Road, DLF-Phase V, Sector 43, Gurgaon, Haryana to the person involved in this reference.

Exhibits for the managements

NIL

नई दिल्ली, 14 फरवरी, 2017

का.आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/62/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/62/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 28/2012

Reference No. L-41012/62/2011-IR(B-I) dated: 30.1.2012

Shri Manoj Sharma
S/o Shri Vinod Sharma
C/o 1-B-82, Kudi Housing Board,
Jodhpur.

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

- | | | |
|---|---|------------------------------------|
| For the Applicant | : | Sh. Kunal Rawat, Adv. |
| For the Non-applicant Railway | : | Sh. L.P.Singhal, Adv. |
| For non-applicant Ms.Gulabrai & Company | : | Ex-parte/ Sh. K.K.Paliwal, Manager |

AWARD

27.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of sr. Divisional commercial Manager/ Ms. Gulabrai and company, Jodhpur in terminating the services of Shri Manoj Sharma S/o shri vinod Sharma w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 4.6.1993 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 4.6.1993 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.
3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F , 25-G , 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.
4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.
5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only ‘Train side Vending’ till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 4.6.93 to 7.1.2011 & has alleged that applicant has never worked

under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 4.6.1993. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company is to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 4.6.93 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 4.6.93 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during

conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2 .

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-9 along with index which are photocopy of identity card, character certificate & medical certificate relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

- i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2

M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 4.6.93. According to statement of claim applicant is in the employment of respondent No.2 since 4.6.93 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 4.6.93 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 4.6.93 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, salary certificate for different period which bear the seal & signature of authorised signatory of M/s. Gulab Rai & Co.. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. W-6, pay certificate for financial year 2009-10 issued by company to applicant dated 26.11.2010 has acknowledged that applicant was in the service of the company on 26.11.2010. This document indicates that applicant was in employment of the respondent No. 2 in the month of January, 2010. Exhibit w-9 provides information about contribution of the applicant towards PF for the period 2010-2011 in which contribution M/s. Gulab Rai & Co. is Rs.5707/- & employee's contribution is Rs.17990/-. This indicates that applicant was in the employment of the respondent No.2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to adduce evidence to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrenched workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

"10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of 'workman' as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of

employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs.”

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence,

applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is 18.12.1972 which means that applicant is of the age of above 38 years at the time of termination from service & he has been inducted in the service on 4.6.1993 as per statement of claim. Thus, he has completed about 17 years & 7 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In the financial year 2009-10 his gross salary in ex-w-6 is Rs. 27723/-. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.23500/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Manoj Sharma S/o Sh. Vinod Sharma w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Manoj Sharma a sum of Rs.23500/- (Twenty Three Thousand & Five Hundred Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Manoj Sharma. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 59/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/13/2009-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Uttar Paschim Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/13/2009-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 59/2012

Reference No. L-41012/13/2009-IR(B-I) dated: 21.03.2012

Shri Kailash Sharma
S/o Shri Jawari Lal Sharma
R/o Village : Bodwa, teh. Jayal,
Distt – Nagaur (Raj.)

V/s

1. Mandal Rail Prabhandhak
Uttar Paschim Railway
Jodhpur.
2. Mandal Vanijya Prabandhak
Uttar Paschim Railway
Jodhpur.
3. M/s. Gulab Rai & Co.
Refreshment Room
Contractor (Khanpan Room)
Railway station, Jodhpur.
4. Prabhandhak
Indian rly. Catering & tourism Corp.,
9th Floor, Bank of Baroda bldg.,
16, parliament street, New Delhi.

Present :

- | | | |
|--|---|-------------------------------------|
| For the Applicant | : | Sh.Narayan Prasad Ojha,Adv. |
| | : | Sh. Kunal Rawat, Adv. |
| For the Non-applicant Railway
(Respondent No.1 & 2) | : | Sh. L.P.Singhal, Adv. |
| For non-applicant IRCTC | : | Sh. P.C.Sharma, Adv. |
| For non-applicant Ms.Gulabrai
& Company | : | Ex-parte/ Sh. K.K.Paliwal, Manager. |

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Ms. Gulabrai and company, Refreshment Room Contractor, Railway station, Jodhpur (a contractor of North Western Railway, Jodhpur) in terminating the services of shri Kailash Sharma S/o Shri Jawari Lal Sharma w.e.f. 3.12.2007 is legal and justified ? to what relief the Shri Kailash Sharma is entitled?”

2. Briefly fact of the case is that applicant workman was appointed as salesman by respondent No.3 M/s. Gulab Rai & Co. on 27.10.2002 & services of the applicant were kept continued. Applicant was paid a monthly salary of Rs.4000/- by respondent No.3 & facility of PF was provided to the applicant by respondent No.3 M/s. Gulab Rai & Co. & periodically applicant was medically examined for his fitness.
3. On 20.7.2007 when applicant reached on place of duty he was prevented from carrying on his duty by Gitanjali, an officer of the company. Applicant asked for reason for not allowing to work but was not replied. On 21.7.2007 also applicant appeared for duty but he was prevented by respondent No.3. Thereafter, on 14.8.2007 applicant again contacted respondent No.3 but he was not permitted to work. It is contention of the applicant in para 5 of statement of claim that after 14.8.2007 periodically he kept contacting respondent No.3 but remained unsuccessful in joining the duty & on 3.12.2007 respondent No.3 specifically refused to allow the applicant to continue the work. Applicant unsuccessfully demanded from respondent No.3 reason in writing for refusal to allow working.
4. It has been further contended by applicant that applicant was kept in forced unemployment by respondent No.3 & removed illegally from the service on 3.12.2007 without making payment from July, 2007 till the date of filing the application before the tribunal. Applicant was not provided the facility of ESI, bonus, uniform, leave & other allowances despite there being provision for such facilities.
5. Aggrieved by conduct of the respondent No.3 applicant through his advocate had sent notice dated 31.12.2007 to respondents which was not replied despite receipt by respondent 1,2 & 4. Respondent No.3 had replied the notice with false & fabricated allegation against the applicant which is not acceptable to applicant. Such reply by respondent No.3 was with a view to escape the legal responsibilities arising out of notice.
6. Further in para 9 of the statement of claim applicant has alleged that after illegal removal of applicant from service many persons were employed by respondents but respondents took no step to reinstate the applicant in service.

The above act of respondent No.3 is against the provisions of Industrial Disputes Act, 1947 & Contract Labour (Regulation & Abolition) Act, 1970. Applicant has continuously worked with respondent No.3 for more than five years since 27.10.2002 to 3.12.2007 & further applicant has worked for more than 240 days continuously prior to the date of termination from service, hence, applicant is entitled to the benefits of Chapter 5-A of Industrial Disputes Act, 1947 & termination of the services of the applicant is unfair & illegal on account of non-compliance of Chapter 5-A. Applicant was not given any notice or pay in lieu of notice or retrenchment compensation, hence, his termination is unfair & illegal.

7. Further in para 14 it has been alleged that nature of the work of respondent is of permanent character. Applicant has repeatedly requested orally & in writing to reinstate him in service but despite assurance he was not reinstated. The removal of the applicant from the service is against the principle of natural justice. Applicant is unemployed who is facing financial hardship with his family. He is not having any source of income, hence, his reinstatement is necessary.

8. It has been further alleged in para 17 that employees junior to him have been retained in service & after his removal from service fresh recruitments have been made by respondent, thus, respondent has acted in violation of section 25-F, 25-G & 25-H of Industrial Disputes Act, 1947 & has adopted unfair labour practice. At the time of removal from the service respondent has not given any reason in writing for removal from service. No charge sheet was issued to the applicant, hence, removal from the service is against the principle of natural justice. Applicant has prayed to reinstate him in the service with back wages & all consequential benefits declaring order of termination dated 3.12.2007 void & illegal. It has been further prayed that order be made for payment of salary from August, 2007 to December, 2007.

9. In reply to statement of claim by respondent No.3 M/s. Gulabrai & Company statements in para 1 to 3, para 6 to 7 & para 9 to 19 have been said to be wrong. Against para 4 it has been alleged that applicant did not appear for work as alleged by him in statement of claim & further against para 5 it has been alleged that he did not appear on 14.8.2007 also. Against para 8 it has been alleged that notice sent by applicant was replied by answering respondent No.3.

10. Further against para 1 of statement of claim it has been alleged that applicant was given appointment first time on 1.9.2003 with monthly pay of Rs.1600/-. Applicant after certain period of time started committing mistakes & he was not performing his job in right manner due to which complaints were continuously pouring against him. Against para 2 it has been alleged that statements of claim is correct that facility of PF was provided to applicant & he was medically examined annually. Further it has been alleged that based on Rs.1600/- monthly pay contribution of EPF was made by respondent No.3.

11. Against para 3 of statement of claim it has been alleged that complaints were received earlier against the applicant from DRM, Jodhpur & customers that applicant Sh. Kailash Sharma was supplying mineral water of unauthorised brand & collecting money more than the printed price & he was misbehaving with the passengers. Against the complaints on many occasions applicant was instructed not to do the alleged wrong noted in the complaints & he assured the respondent No.3 not to commit the wrong in future but after laps of certain period of time he again engaged himself in supplying unauthorised article, misbehaving & collecting unauthorised money from the passengers. Applicant was also not wearing the uniform & working according to the rules in consequence whereof respondent No.3 was exposed to harassment & was also fined by railway. No change was noticed in the applicant despite repeated instructions. On 19.7.2007 applicant came on work & left without information & since 20.7.2007 he stopped coming for duty whereas according to rule it is necessary to give information before proceeding on leave. Owing to absence of applicant without information hardship to respondent No.3 arose & he was not able to sent a workman in the concerned train on 20.7.2007 where applicant was supposed to go, thereafter applicant remained absent without information & on enquiry it was noticed that applicant was engaged in a private agency in Jodhpur. Applicant did not turn up on work despite information from respondent No.3. It is contention of respondent No.3 that in above circumstance, there is no question about applicant not taken on duty on 20.7.2007 as he did not appear for duty on that day. Further, it has been alleged that applicant did not appear on next date 21.7.2007 also.

12. On 14.8.2007 applicant neither appeared on work nor contacted respondent No.3 & he also did not sent any information about leave. After 14.8.2007 only on 6.11.2007 applicant came to respondent No.3 & informed that he has joined job in a travel agency hence he does not want to continue with respondent No.3 & demanded unpaid wages from respondent No.3. Respondent No.3 asked the applicant about the amount of unpaid wages due to respondent No.3 which was paid to him on demand. On demand made to applicant to deposit the identity card, uniform & other utensils he started quarrelling with respondent No.3 & demanded the due payment immediately & he was paid a sum of Rs.893/- on 6.11.2007 itself about work done by him in the month of July, 2007. Applicant departed with above money assuring the respondent to return soon with identity card etc. but never return back. Thereafter, applicant did sent a false notice to respondent No.3 which was replied. Applicant has voluntarily without informing respondent No.3 had left the place of duty & joined the job of travel agency & due to his sudden departure from place of duty without notice applicant suffered huge loss to his business.

13. In reply to para 6 of statement of claim it has been alleged that applicant had voluntarily in illegal manner left the employment with respondent No.3 & contention in this regard in para 6 of statement of claim is wrong.

14. Against para 21 of statement of claim respondent No.3 has alleged that the work of the applicant was unsatisfactory & on many occasions written & oral complaints were received against applicant & he did not respond to the advices given to him against the complaints & his wrong doing. He stopped coming on work since 20.7.2007 & secured another employment elsewhere. On 6.11.2007 he received his entire due amount & voluntarily left the employment of the respondent No.3. It has been further alleged that he did not return the identity card, uniforms & utensils etc. till the filing of reply to statement of claim. He was never removed from the job by respondent No.3, hence, applicant is not entitled to any relief & his claim is liable to be dismissed with cost.

15. In parawise reply to statement of claim by respondent No.1 & 2, DRM, NWR, Jodhpur & Divisional Commercial Manager, NWR, Jodhpur respectively statements in para 1, 8, 9 & 12 have been specifically denied. About statements in para 2 to 6, para 10, para 13 to 17 & 19 to 21, it has been alleged that they are not related to respondent No.1 & 2. About statements in para 7 & 11 it has been alleged that they are concerned with respondent No.3 & need no reply from respondent No.1 & 2. Further it has been alleged that respondent No.3 M/s. Gulabrai & Company was licensee of Railway Administration on contract. Respondent No.3 was permitted to do 'Train Side Vending' till 15.10.2011 as per order of NWR headquarter, Jaipur. About rest of the content of statement of claim in para 1 it has been alleged that they are not concerned with respondent No.1 & 2 & respondent No.3 is answerable for allegations in para 1 of statement of claim.

16. Against all the paras of statement of claim wherein it has been alleged by respondent No.1 & 2 are not concerned with them, it has been alleged that respondent No.3 is answerable against those allegations.

17. Apart from above para wise reply to statement of claim by respondent No.1 & 2 two preliminary objections have been raised by them that they are not the employer of the applicant & the applicant is not the workman of the respondent No.1 & 2 & they have not issued any appointment letter to the applicant. Further, it has been alleged that respondent No.1 & 2 have been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection it has been further alleged that respondent No.1 & 2 have been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1 & 2, hence, application is liable to be dismissed on the ground of jurisdiction also.

18. In reply to statement of claim by respondent No.4 Prabhandhak, Indian rly. Catering & tourism Corpn., Para 1,2, 8,10,11,14,15,16, 17 & 18 of statement of claim have been specifically denied. Against para 3,4,5,6,7,9,12,13,19,20 & 21, it has been alleged that they are not related to respondent No.4. Further it has been alleged that no relief has been claimed against respondent No.4 because respondent No.4 has neither appointed nor given any appointment order to the applicant & no salary payment has been made by respondent No.4.

19. It has been further alleged that applicant has no connection of any kind with respondent No.4, hence, application of the applicant is not maintainable against respondent No.4. Respondent No.4 came in existence in year 2001 under Indian Railway. Respondent No.4 makes arrangements of "Khan- Pan" for railway passengers on basis of contract under settled procedure wherein contracts are executed between the parties according to the provision of Indian Contract Act & contractors are paid according to conditions of contract. In the process of contract respondent No.4 remains unconcerned about number of workmen engaged by contractor for execution of his contractual work. Applicant has never contacted or given any notice to respondent No.4 & he cannot bring his case against the respondent No.4. Respondent No.4 is unnecessary party in this case. It has been further alleged in para 17 of reply that at the time of filing reply on 4.3.2013 IRCTC is not running any railway canteen & application of applicant is liable to be dismissed against respondent No.4 as not maintainable.

20. Beside above reply to statement of claim respondent No.4 has raised preliminary issues against the application wherein he has claimed that applicant is not the employee of the respondent No.4 & there is no employer - employee relationship between respondent & applicant, hence, application is liable to be dismissed. It has been further alleged that respondent No.3 M/s. Gulabrai & Company is running the refreshment room at Jodhpur railway station & respondent No.3 is alone responsible for the workman engaged by respondent No.3 for running the refreshment room & respondent No.4 is no way responsible to workman engaged in refreshment room at Jodhpur railway station. Further, it has been stated in preliminary objection that after the year 2010 management of 'Khan-Pan' units are not under the control of respondent No.4 & they are directly under the control of railway. IRCTC is a separate unit & it can not be attached with the claim of the applicant in any manner.

21. No rejoinder has been filed by applicant against reply to statement of claim of any respondent.

22. Applicant Sh. Kailash Sharma has filed affidavit in evidence in support of statement of claim & he has been cross examined by respondent No.1 & 2 Railway & respondent No.4 IRCTC on 1.10.2014. From the side of respondents, no witness has been produced by respondent No.1 & 2. No witness has been produced by respondent No.3 M/s. Gulabrai & Company. Since, 1.10.2014 case is proceeding ex-parte against M/s. Gulabrai & Company. Application of M/s.

Gulabrai & company for cancelling order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. No oral evidence has been adduced by M/s. Gulabrai & Company because of case proceeding ex-parte against him. M/s. Gulabrai & company thereafter has participated only at the final hearing of the argument on 4.2.2016 & 11.2.2016. Affidavit of Shri Sambhu Sharma, Assistant Manager has been filed by respondent No.4 IRCTC. Shri Sambhu Sharma has been cross examined on 24.11.2015 by learned representative of the applicant.

23. Applicant Sh. Kailash Sharma has filed documentary evidence, Ex-w-1 to ex-w-10 along with his affidavit in evidence which are photocopy of medical fitness certificate, character certificate issued by M/s. Gulabrai & Company, Identity card & registered notice sent to respondents against termination of his services. Respondent No.3 M/s. Gulabrai & company has filed seven documents on 30.1.2004.

24. Respondent No.1 & 2 at the time of argument have filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1 & 2.

25. Heard the argument of learned representative of the applicant & learned representative of all the respondents & perused the record carefully.

26. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

27. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 & 2:-

- i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

28. It has been argued by learned representative of the applicant Sh. Kailash Sharma that services of the applicant has been terminated on 3.12.2007 by respondent No.3, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 of The Industrial Disputes (Central) Rules, 1957. Respondent No.3 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the applicant as salesman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 & 2 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case. It has been argued by learned representative of IRCTC that case of the applicant is not maintainable against IRCTC because applicant was neither issued with any appointment letter by IRCTC nor was kept in the service of IRCTC on any occasion & IRCTC is unconcerned with applicant. It has also been alleged that there is no employer employee relationship between IRCTC & applicant & petition of the applicant is liable to be dismissed against respondent No.4 with cost.

29. It has been argued on behalf of M/s. Gulab Rai & Co. that contention of the applicant that his services have been terminated by respondent No.3 is completely false & the true fact is that applicant himself voluntarily stopped coming since 20.7.2007 without any information to respondent No.3 & without taking leave of absence. Due to absence of applicant work of respondent No.3 started suffering & on attempt to know the cause of absence of applicant it came to the notice of respondent No.3 that applicant has joined the job in Jodhpur in some private agency. Thereafter, information was sent to the applicant but he did not return back on job of respondent No.3 & did not appear on the work since 20.7.2007. Further it has been argued that applicant came to respondent No.3 on 6.11.2007 & himself alleged that he has taken employment in some travel agency & does not want to work with respondent No.3 & accordingly his dues may be cleared & paid which was paid for the month of July, 2007 for the period he had worked. Further it has been argued that beside the fact that contention of the applicant is false that his services were terminated by respondent No.3 it is also wrong to say that he has worked for 240 days immediately preceding the alleged date of termination of his service because applicant voluntarily did not appear for work since 20.7.2007 & he was never

prevented from working on the place of duty. It has been further argued that respondent No.3 has vacated the premises of the railway & handed over the possession due to end of the contract & respondent is not running any vending business relating to railway or any other business hence, respondent is not in position to provide any engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.3 M/s. Gulabrai & Company to submit to the court document relating to delivery of possession of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.3 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.3.

30. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.3 M/s. Gulabrai & company is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 & 2 railway also. Applicant has been cross examined only by railway & IRCTC. No cross examination has been done by M/s. Gulab Rai & Company due to case proceeding ex-parte against him.

31. As far as the question of the applicant being in the employment of respondent No.3 at the time of termination is concerned, in reply to statement of claim respondent No.3 has denied that applicant is working with him since his date of appointment on 27.10.2002. According to statement of claim applicant is in the employment of respondent No.3 since 27.10.2002 & his services were terminated on 3.12.2007. As per statement of claim it is admitted case of the applicant that on 20.7.2007 when he appeared for work on duty place he was not allowed to work by Gitanjali, the officer of the company. Again applicant appeared on next date 21.7.2007 & again he was not taken on work. After that applicant appeared on 14.8.2007 for work but respondent No.3 avoided & did not permit him to do the work. According to contention of the applicant in statement of claim he kept contacting respondent No.3 & respondent No.3 continued assuring him to kept him back in the job but on 3.12.2007 respondent No.3 finally refused to take him back but did not provide any reason in writing for not taking him back on job. The date of 3.12.2007 has been taken by applicant as date of termination for the purpose of this dispute. According to contention of M/s. Gulabrai & company service of the applicant was never terminated by the company & in this respect contention of the applicant is false. According to contention of the company applicant never appeared for work on or after 20.7.2007. In above fact & circumstances, burden is on the applicant to prove that his services were terminated & he did not voluntarily stopped working with respondent No.3. In the affidavit in evidence filed by applicant he has alleged that on 20.7.2007 when he appeared on place of duty then he was prevented by Gitanjali from working without any reason & thereafter applicant left for home. No reason has been assigned by applicant that why he was prevented from working whereas case of the M/s. Gulabrai & company is that due to continuous absence of the applicant when work of the company started suffering then on enquiry about absence it came to the notice of the company that applicant has joined the job somewhere else in Jodhpur in some travel agency. Attendance sheet of 21.7.2007 & 23.7.2007 indicates that applicant was absent. On 21.7.2007 applicant Sh. Kailash, Sh. Rashid, Sh. Manoj, Sh. Ghanshyam, Sh. Balesher, Sh. Motumal & Sh. Rajuram were absent out of 21 persons & remaining workmen were present. Attendance sheet of 23.7.2007 indicates that on 23.7.2007 also applicant Sh. Kailash was absent. If Sh. Kailash was present on 21.7.2007 he must have signed the attendance like other workmen. This indicates that contention of the applicant is not true that he appeared on 20.7.2007 & subsequent date on 21.7.2007. It is not the case of applicant Sh. Kailash Sharma that he was not permitted to sign the attendance sheet which goes to show that his contention is false that he appeared on 20.7.2007 & 21.7.2007 & was prevented from working. No co-worker has been examined on this point. His own affidavit is not sufficient to give credence to his contention in fact & circumstances of the case. Attendance sheet of 19.7.2007 indicates that he has signed the attendance sheet & worked for the day. State of attendance sheet appears to be proof of the fact that contention of M/s. Gulabrai & company is true that applicant stopped coming on work since 20.7.2007 without seeking prior permission or leave of absence.

32. On 6.11.2007 applicant has signed a receipt of Rs. 893/- for the salary of July, 2007 which has been filed by M/s. Gulabrai & company. This receipt is proof of the fact that on demand of the applicant from the company due salary of the July, 2007 was paid for the number of days he had worked. It is pertinent to note that there is no reason that if applicant was prevented by respondent No.3 from working then why a written notice in the month of July, 2007 was not sent by him & a notice has been sent by him only on 31.12.2007. This indicates that applicant was not interested in working with respondent No.3 beyond 20.7.2007 & contention of the applicant appears to be false that he was prevented by respondent No.3 from working on or after 20.7.2007. From the above discussion it is clear that applicant has worked with the respondent No.3 M/s. Gulabrai & company only till 19.7.2007 & rest of the contention of the applicant is false that till 3.12.2007 i.e. alleged date of termination he continued to contact the respondent & on 3.12.2007 respondent finally refused that he will not allow the applicant to work. It is also clear from the facts on record that he voluntarily stopped coming on work since 20.7.2007.

33. As far as the question of appointment of applicant with respondent No.3 is concerned according to statement of claim he was appointed on 27.10.2002 as salesman but respondent No.3 M/s. Gulabrai & Company has denied this fact

& alleged in reply to statement of claim that applicant was appointed on 1.9.2003. In cross examination applicant has admitted that he was not given any appointment letter & he had not signed any agreement with respondent No.3. W-1 is medical fitness certificate of the applicant which has been issued on 24.1.2003 & is valid till 23.1.2004. Medical examination of the applicant indicates that contention of the respondent M/s. Gulabrai & company is incorrect that applicant was appointed on 1.9.2003 because medical examination has taken place on 24.1.2003 which is proof of the fact that he was taken on work at least on or after 24.1.2003 in the month of January, 2003. From above discussion I am of the view that applicant was appointed in January, 2003 because he could join service only after medical examination and applicant left service voluntarily on 20.7.2007. Fact of joining service on 27.10.2002 is not supported by any document like appointment letter, medical examination certificate, wage payment certificate, any other document available on record.

34. Period of 240 days from the alleged date of termination on 3.12.2007 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 3 for 12 calendar month immediately prior to 3.12.2007 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.3 has been directed by order of the tribunal dated 19.3.2014 to file documents in tribunal as per request of the applicant on application dated 4.12.2013 wherein attendance register, pay register, complaint against the applicant by any passenger & action taken on that application & sell voucher & register between 27.10.2002 & July, 2007 have been requested to be summoned. Respondent No.3 has filed seven documents only on 30.1.14 which are attendance sheet, character certificate issued to the applicant by company & order of the Ministry dated 14.10.2009 rejecting case of the applicant for reference. As per the contention of the applicant it is admitted fact by applicant that he did not work for the period 20.7.2007 to 3.12.2007 i.e. alleged date of termination. It is contention of the applicant that he was not permitted to work from 20.7.2007 onward but he has failed to prove that he appeared for work from 20.7.2007 till the alleged date of termination on 3.12.2007. Absence of applicant on 20.7.2007 & on onward dates indicate his voluntary absence for which he himself is responsible. His contention in this regard has not been proved by any co-worker that he really appeared for work & was not allowed because on 21.7.2007 nearly 14 workers have been present & 5 workers have been absent including Sh. Kailash Sharma. On 23.7.2007 8 workers are absent including Sh. Kailash Sharma & 12 workers are present. Absence of applicant in above circumstance shows his voluntarily absence in view of the fact that he had not given any notice to the employer till 31.12.2007. He has also not given any substantive reason to show that why he was not allowed to work or if he was present then why he did not sign the attendance register. On 6.11.2007 applicant has appeared before the respondent No.3 & has taken due payment for the month of July, 2007. There is no record of complaint made to any authority against the respondent No.3 about his not permitting the applicant to work on duty place. The above circumstances are sufficient to infer that applicant has voluntarily absented himself from the place of duty although no adverse action has been taken by respondent No.3 & he has made payment of July, 2007 for the days applicant has worked in the month of July, 2007. In calendar year from the date of reference applicant has worked only for 139 days & absented himself for 226 days from 20.7.2007 to 3.12.2007. The period of absence of 226 days is due to wilful absence of workman & without fault on the part of respondent No.3. Based on above discussion it is clear that applicant has not worked for 240 days in a calendar year. As far as the attraction of provision of section 25-F of Industrial Dispute Act, 1947 is concerned as the applicant has not worked for the period of 240 days in calendar year from the date of reference, provision of section 25-F of Industrial Disputes Act, 1947 Act is not attracted.

35. As far as the violation of section 25-G & 25-H is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has also not given name of person junior to him retained in service. Applicant has also not given detail of any person who has been appointed by M/s. Gulab Rai & Company subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act.

36. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of

judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s). It has been argued by learned representative of IRCTC that applicant has no cause of action against IRCTC because of he was neither appointed by IRCTC nor given any engagement by IRCTC & there is no employer- employee relationship between IRCTC & applicant.

37. Applicant has admitted in cross-examination that he was not given any order of removal from service in writing by M/s. Gulabrai & company. This indicates an admission by applicant that he was terminated from service by respondent No.3. In statement of claim also in para 6 it has been admitted by applicant that he was removed from service by respondent No.3. Perusal of reference order also indicates that conduct of the M/s. Gulabrai & company, a contractor of NWR, Jodhpur has been questioned in terminating the services of the applicant. Cross examination of witness of IRCTC Sh. Shambhu Sharma, Assistant Manager by applicant reveals nothing favourable to applicant. Sh. Shambhu Sharma has alleged that functioning of the IRCTC was merged with railway after the end of existence of IRCTC. In above fact & circumstance, the main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Company.

38. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

39. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the

Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs.”

40. In the present case, admittedly applicant has been appointed by respondent No.3 & has been an employee fully within the control & supervision of the respondent No.3. He was in receipt of pay & emoluments from respondent No.3 & respondent No.1 & 2 have no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 & 2 cannot be held responsible for liability of respondent No.3 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.3 is responsible for the liabilities, if any, which arises out of termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

41. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Company in terminating the services of applicant is justified & legal. There is no violation of provisions of 25-F of Industrial Disputes Act in terminating the services of applicant by M/s. Gulabrai & company.

42. In the result, the reference is answered in affirmative against the applicant workman & it is held that the action of the management of Ms. Gulabrai and company, Refreshment Room Contractor, Railway station, Jodhpur (a contractor of North Western Railway, Jodhpur) in terminating the services of shri Kailash Sharma S/o Shri Jawari Lal Sharma w.e.f. 3.12.2007 is legal and justified. It is further held that the applicant Sh. Kailash Sharma is not entitled to any relief. Application of the applicant is accordingly dismissed.

43. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 29/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/63/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/63/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 29/2012

Reference No. L-41012/63/2011-IR(B-I) dated: 30.1.2012

Shri Ghanshyam Sharma
S/o Shri Chandmal Sharma
C/o Kot Mohalla, Didwana,
District Nagore (Rajasthan)

V/s

3. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
4. Ms. Gulabrai and Company
Railway catering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D Road,
Sardarpura, Jodhpur.

Present :

For the Applicant	:	Sh. Kunal Rawat, Adv.
For the Non-applicant Railway	:	Sh. L.P.Singhal, Adv.
For non-applicant Ms.Gulabrai & Company	:	Ex-parte/Sh. K.K.Paliwal, Manager

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Sr. Divisional Commercial Manager/ Ms. Gulabrai and company, Jodhpur in terminating the services of Shri Ghanshyam Sharma S/o Shri Chandmal Sharma w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 1.7.1987 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running

the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 1.7.1987 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Sr. Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 1.7.1987 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 1.7.1987. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not

engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 1.7.1987 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 1.7.1987 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2.

14. In support of statement of claim as documentary evidence applicant has filed document W-1 to W-21 along with index which are photocopy of identity card, medical fitness certificate, engagement form, contribution to EPF, character certificate & ESI card relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross-examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 1.7.1987. According to statement of claim applicant is in the employment of respondent No.2 since 1.7.1987 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross-examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 1.7.1987 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross-examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 1.7.1987 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, medical fitness certificate, engagement form, contribution to EPF, character certificate & ESI card relating to different period. All these documents & above noted

contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. Ex-w-1 is the medical fitness certificate dated 1.7.1987 which indicates the date of entry of applicant into service of respondent No.2. EX-w-3 is medical fitness certificate issued on 7.1.2010 which is valid till 31.12.2010. EX-w-3 indicates that applicant was in the service of respondent No.2 in January, 2010. Ex-w-7 is medical fitness certificate issued on 5.1.2011 which is valid till 31.12.2011. Ex-w-7 indicates that applicant was in the employment of the respondent No.2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrench workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D. Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession of canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is 17.7.1962 which means that applicant is of the age of above 48 years at the time of termination from service & he has been inducted in the service on 1.7.1987 as per statement of claim. Thus, he has completed about 23 years & 6 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.30500/- to the applicant to be paid by respondent No.2 Ms. Gulabrai & Company will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Ghanshyam Sharma S/o Sh. Chandmal Sharma w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Ghanshyam Sharma a sum of Rs.30500/- (Thirty Thousand & Five Hundred Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Ghanshyam Sharma. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/64/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/64/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 30/2012

Reference No. L-41012/64/2011-IR(B-I) dated: 30.1.2012

Shri Hariram Singh
S/o Shri Roopnarayan Singh
C/o Near Danchiyo School
Jalori Gate Ke andor
Jodhpur (Rajasthan).

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway catering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant : Sh. Kunal Rawat, Adv.
For the Non-applicant Railway : Sh. L.P.Singhal, Adv.
For non-applicant Ms.Gulabrai & Company : Ex-parte/Sh. K.K.Paliwal, Manager

AWARD

27.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Sr. Divisional Commercial Manager/ Ms. Gulabrai and company, Jodhpur in terminating the services of Shri Hariram Singh S/o Shri Roopnarayan Singh w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 4.4.1992 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness &

serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 4.4.1992 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 4.4.1992 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 4.4.1992. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not

engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 4.4.1992 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 4.4.1992 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2 .

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-16 along with index which are photocopy of identity card, character certificate, medical certificate, ESI card for self & family relating to different period & information received under Right to Information Act about balance of amount existing in favour of applicant in EPF in the Financial year 2010-11. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 4.4.1992. According to statement of claim applicant is in the employemnt of respondent No.2 since 4.4.1992 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 4.4.1992 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 4.4.1992 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, character certificate, medical certificate, ESI

card for self & family relating to different period & information received under Right to Information Act about balance of amount existing in favour of applicant in EPF in the Financial year 2010-11. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. Ex-w-11 medical fitness certificate for calendar year 2009 issued on 23.1.2009 is valid till 31.12.2009 & w-12 medical fitness certificate issued on 7.1.2010 is valid till 31.12.2010. These two certificates indicate that applicant was in the employment of respondent No.2 in the month of January, 2010. Ex-w-14 medical fitness certificate issued on 5.1.2011 is valid 31.12.2011. Ex-w-14 indicates that applicant was in the employment of respondent No. 2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrench workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is 27.11.1973 which means that applicant is of the age of above 37 years at the time of termination from service & he has been inducted in the service on 4.4.1992 as per statement of claim. Thus, he has completed about 18 years & 9 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.24500/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Hariram Singh S/o Sh. Roopnarayan Singh w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Hariram Singh a sum of Rs.24500/- (Twenty Four Thousand Five Hundred Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Hariram Singh. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 32/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/03/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/03/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 32/2012

Reference No. L-41012/03/2012-IR(B-I) dated: 03.02.2012

Shri Ganpat Sharma
S/o Shri Bhagirathram Sharma
C/o Vill. Buroch, Post – Aagunta
District – Nagore (Rajasthan)

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant : Sh. Kunal Rawat, Adv.
For the Non-applicant Railway : Sh. L.P.Singhal, Adv.
For non-applicant Ms.Gulabrai & Company : Ex-parte/Sh. K.K.Paliwal, Manager

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North Western Railway, Jodhpur and their contractor M/s.. Gulabrai and company in terminating the services of Shri Ganpat Sharma S/o Shri Bhagirathram Sharma w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 22.9.1999 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending

also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from on 22.9.1999 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from on 22.9.1999 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since on 22.9.1999. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on on 22.9.1999 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from on 22.9.1999 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2 .

14. In support of statement of claim as documentary evidence applicant has filed document W-1 to W-17 along with index which are photocopy of identity card, statement of EPF, medical certificate & information received under Right to information Act in relation to EPF relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

- i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 22.9.1999. According to statement of claim applicant is in the employment of respondent No.2 since on 22.9.1999 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross-examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from on 22.9.1999 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross-examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since on 22.9.1999 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, statement of EPF, medical certificate & information received under Right to information Act in relation to EPF relating to different period. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are

sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. W-1 in medical fitness certificate issued on 22.9.1999 is valid till 21.9.2000 which indicates the entry of applicant into the service of respondent No.2 Gulab Rai & Co. W-10 is medical fitness certificate issued on 7.1.2010 which is valid till 31.12.2010. Document w-10 indicates that the applicant was in the employment of respondent No.2 in the month of January, 2010. W-11 is medical fitness certificate issued on 5.1.2011 which is valid till 31.12.2011. Document w-11 indicates that applicant was in the employment of the respondent No.2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrench workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D. Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is 19.1.1975 which means that applicant is of the age of above 35 years at the time of termination from service & he has been inducted in the service on 22.9.1999 as per statement of claim. Thus, he has completed above 11 years of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.15000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Ganpat Sharma S/o Sh. Bhagirathram Sharma w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Ganpat Sharma a sum of Rs.15000/- (Fifteen thousand Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Ganpat Sharma. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/02/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/02/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 33/2012

Reference No. L-41012/02/2012-IR(B-I) dated: 03.02.2012

Shri Sukha Ram
S/o Shri Vasanji, Caste- Gurjar,
C/o vill. Kharchi, Marwar Junction,
District – Pali (Rajasthan)

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway catering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant : Sh. Kunal Rawat, Adv.
For the Non-applicant Railway : Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company : Ex-parte/Sh. K.K.Paliwal, Manager

AWARD

27.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North Western Railway, Jodhpur and their contractor M/s. Gulabrai and company in terminating the services of Shri Sukha Ram S/o Shri Vasanji Gurjar w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. in the year 1998 (date not given) & started working since then. The main business of employer contractor was ‘ Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side

vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from the year 1998 (date not given) to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F , 25-G , 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Sr. Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from the year 1998 (date not given) to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 7.11.2002 . It is pertinent to note that in statement of claim applicant has alleged that he was appointed in 1998 under respondent No.2 but he has not given date of appointment, he has not alleged that he was appointed by respondent No.2 on 7.11.2002. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman &

when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 7.11.2002 or anytime thereafter & has not worked continuously till 7.1.2011. It is pertinent to note that in statement of claim applicant has alleged that he was appointed in 1998 under respondent No.2 but he has not given date of appointment. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from the time of appointment of applicant to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2 .

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-7 along with index which are photocopy of identity card & medical certificate & statement of EPF contribution relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of his appointment on 7.11.2002 or since 1998. According to statement of claim applicant is in the employment of respondent No.2 since 1998 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked since 1998 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 1998 or 7.11.2002 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, medical certificate &

statement of EPF contribution relating to different period. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. W-8 medical fitness certificate issued on 3.1.2009 is valid till 31.12.2009 & w-9 medical fitness certificate issued on 7.1.2010 is valid till 31.12.2010. This two documents indicates that applicant was in employment of the respondent No.2 in the month of January, 2010. Ex-w-10 is medical fitness certificate issued on 5.1.2011 which is valid till 31.12.2011. This indicates that applicant was in the employment of respondent No. 2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrench workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D. Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession of canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is 20.9.1970 which means that applicant is of the age of above 40 years at the time of termination from service & he has been inducted in the service in the year 1998 (date not given) as per statement of claim. Thus, he has completed about 12 years of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.16500/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Sukha Ram S/o Sh. Vasna Gurjar w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Sukha Ram a sum of Rs.16500/- (Sixteen Thousand & Five Hundred Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Sukha Ram. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 34/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/01/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/01/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 34/2012

Reference No. L-41012/01/2012-IR(B-I) dated: 03.02.2012

Shri Moti Lal
S/o Shri Kuna Ramji, Caste Rao,
C/o Gangunda, Tehsil- Sojat,
District – Pali (Rajasthan)

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant : Sh. Kunal Rawat, Adv.
For the Non-applicant Railway : Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company : Ex-parte/Sh. K.K.Paliwal, Manager

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North Western Railway, Jodhpur and their contractor M/s. Gulabrai and company in terminating the services of Shri Moti Lal S/o Shri Kuna w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 7.8.2006 & started working since then. The main business of employer contractor was ‘ Train Side vending ’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending

also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 7.8.2006 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Sr. Divisional Commercial Manager, NWR, Jodhpur, statements in paras 1, 3, 4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 7.8.2006 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 paras 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 7.8.2006. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 7.8.2006 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 7.8.2006 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about paras 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2.

14. In support of statement of claim as documentary evidence applicant has filed document W-1 to W-4 along with index which are photocopy of medical fitness certificate relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulab Rai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 7.8.2006. According to statement of claim applicant is in the employment of respondent No.2 since 7.8.2006 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross-examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 7.8.2006 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross-examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 7.8.2006 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant relates to medical fitness certificate for different calendar years. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. W-2 medical fitness certificate has been issued on 3.1.2009 which is valid till 31.12.2009 & W-3 medical fitness certificate issued on 11.1.2010 is valid till 31.12.2010. These both documents indicate that applicant was in employment of the service of the respondent No.2 during January, 2010. W-4 medical fitness certificate has been issued on 5.1.2011 which is valid till 31.12.2011. W-4 medical fitness certificate indicates that applicant was in the employment of respondent No.2 till date of termination on 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrench workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh. Even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession of canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is not available on record. According to medical fitness certificate the age of the applicant on date of termination on 8.1.2011 is about 33 years & he has been inducted in the service on 7.8.2006 as per statement of claim. Thus, he has completed about 04years & 5 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.7000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Moti Lal S/o Sh. Kuna w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Moti Lal a sum of Rs.7000/- (Seven Thousand Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Moti Lal. Application of the applicant is accordingly allowed.

34. Award as above.

नई दिल्ली, 14 फरवरी, 2017

का.आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/15/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/15/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 44/2012

Reference No. L-41012/15/2012-IR(B-I) dated: 20.03.2012

Shri Baldev Raj Choudhary
S/o Shri Parturam
R/o Vill- Kalijan, Post : Lily
Tehsil- Kangra, District – Kangra
(Himachal Pradesh), Kangra – 176056.

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant	:	Sh. Kunal Rawat, Adv.
For the Non-applicant Railway	:	Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company	:	Ex-parte/Sh. K.K.Paliwal, Manager

AWARD

27.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North western Railway, Jodhpur and their contractor M/s. Gulabrai and company in terminating the services of Shri Baldev Raj Chaudhary w.e.f. 08.01.2011, is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 4.6.1984 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness &

serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 4.6.1984 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 4.6.1984 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 4.6.1984. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company is to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not

engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 4.6.1984 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 4.6.1984 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2.

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-6 along with index which are photocopy of identity card, character certificate & medical certificate relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 4.6.1984. According to statement of claim applicant is in the employemnt of respondent No.2 since 4.6.1984 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross-examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 4.6.1984 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross-examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 4.6.1984 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card, Character Certificate issued by Gulabrai & Co

& Medical Examination certificate. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. W-5, medical certificate for calendar year 2010 issued by Railway Doctor to applicant dated 7.1.2010 acknowledges that applicant was in the service of the company on 7.1.2010. This document indicates that applicant was in employment of the respondent No. 2 in the month of January, 2010. Exhibit w-6 provides information about the fact that applicant was medically examined on 5.1.2011 & found fit. Validity of this medical certificate is till 31.12.2011. This indicates that applicant was in the employment of the respondent No.2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to adduce evidence to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrenched workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd., respondent No.1 & the Hotel Corporation of India Ltd. respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The date of birth of applicant is April, 1962 which means that applicant is of the age of above 48 years at the time of termination from service & he has been inducted in the service on 4.6.1984 as per statement of claim. Thus, he has completed about 26 & 7 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.34,000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Baldev Raj Choudhary S/o Sh. Parturam w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Baldev Raj Choudhary a sum of Rs.34000/- (Thirty Four Thousand) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of North Western Railway, Jodhpur is not responsible for termination of services of Sh. Baldev Raj Choudhary. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 46/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/10/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/10/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 46/2012

Reference No. L-41012/10/2012-IR(B-I) dated: 14.03.2012

Shri Shankar
S/o Shri Ramchandra Jaaat
C/o R.M.V. Baytu, Bhimji,
Tehsil Baytu, District : Badmer (Rajasthan)
Rajasthan.

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant	:	Sh. Kunal Rawat, Adv.
For the Non-applicant Railway	:	Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company	:	Ex-parte/Sh. K.K.Paliwal, Manager

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Sr. Divisional Commercial Manager/ Ms. Gulabrai and company, Jodhpur in terminating the services of Shri Shankar S/o Shri Ramchandra Jaat w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 7.6.2008 & started working since then. The main business of employer contractor was ‘ Train Side vending ’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain

cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 7.6.2008 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 7.6.2008 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 7.6.2008. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company is to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not

engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 7.6.2008 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 7.6.2008 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2.

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-5 along with index which are photocopy of identity card & medical examination certificate relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 7.6.2008. According to statement of claim applicant is in the employment of respondent No.2 since 7.6.2008 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 7.6.2008 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 7.6.2008 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card & medical examination certificates. All these

documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. Ex-w-3 medical examination certificate dated 3.1.2009 is valid till 31.12.2009 & Ex-w-4 identity card is valid till 31.12.2010. These two documents indicate that applicant was in employment of the respondent No.2 in the month of January, 2010 for the purpose of counting continuous service in the calendar year with reference to date of termination on 8.1.2011. Ex-w-5 is medical fitness certificate issued on 5.1.2011 which is valid till 31.12.2011. This document indicates that applicant was in employment of the respondent No. 2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to adduce evidence to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrenched workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D. Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The age of the applicant at the time of termination of his service on 8.1.2011 is about 40 years & he has been inducted in the service on 7.6.2008 as per statement of claim. Thus, he has completed about 03 years & 7 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstances, I am of the view that an award of a lump sum compensation amount of Rs.7000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Shankar S/o Sh. Ramchandra Jaat w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Shankar a sum of Rs.7000/- (Seven Thousand Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of Sr. Divisional Commercial Manager, North West Railway, Jodhpur is not responsible for termination of the services of Sh. Shankar. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 52/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/09/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/09/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 52/2012

Reference No. L-41012/09/2012-IR(B-I) dated: 23.03.2012

Shri Bala Ram
S/o Shri Ramchandra Ji Jaat
R/o R.M.V., Bayatu, Bhimji,
Tehsil Bayatu, District : Badmer (Rajasthan).

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D Road,
Sardarpura, Jodhpur.

Present :

For the Applicant	:	Sh. Kunal Rawat, Adv.
For the Non-applicant Railway	:	Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company	:	Ex-parte/Sh. K.K.Paliwal, Manager

AWARD

27.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North Western Railway, Jodhpur and their contractor M/s. Gulabrai and company in terminating the services of Shri Bala Ram S/o Shri Ramchandra Ji w.e.f. 08.01.2011 is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 7.6.2008 & started working since then. The main business of employer contractor was ‘Train Side vending’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According

to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 7.6.2008 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in paras 1, 3, 4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 7.6.2008 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 paras 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that paras 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 7.6.2008. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company is to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not

engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 7.6.2008 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 7.6.2008 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about paras 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2.

14. In support of statement of claim as documentary evidence applicant has filed document W-1 to W-5 along with index which are photocopy of medical fitness certificate & identity card relating to different period. Beside these documents applicant has filed his affidavit in evidence & has been cross-examined by respondent No.1 Sr. DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

- i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.

20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.

21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 M/s. Gulabrai & Company to submit to the court document relating to vacation of premises of Railway which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 is not entitled to file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.

22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross-examination has been done by M/s. Gulab Rai & Co.

23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 7.6.2008. According to statement of claim applicant is in the employemnt of respondent No.2 since 7.6.2008 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross-examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 7.6.2008 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross-examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 7.6.2008 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Respondent has not filed copy of notice on record. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include identity card & medical fitness certificate. All these

documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. Ex-w-4 is medical fitness certificate issued by Railway doctor in favour of applicant on 11.1.2010 which is valid till 31.12.2010. This documents indicates that applicant was in the service of respondent No.2 Ms. Gulab Rai & Company in the month of January, 2010. Identity card Ex-W-3 has been issued by Ms. Gulab Rai & Company which is valid till 31.12.2010. Date of issue has not given in Ex-3. Ex-w-2 is identity card valid till 31.12.2009. Ex-W-5 is medical certificate issued in favour of applicant on 5.1.2011 which is valid till 31.12.2011. Document Ex-W-5 indicates that applicant was in the employment of the respondent No.2 till 7.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to adduce evidence to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrenched workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D.Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engage thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal,

payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs."

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The age of the applicant at the time of termination of his service on 8.1.2011 is about 41 years & he has been inducted in the service on 7.6.2008 as per statement of claim. Thus, he has completed about 3 years & 7 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.7000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Bala Ram S/o Sh. Ramchandra Ji w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Bala Ram a sum of Rs.7000/- (Seven Thousand Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of North Western Railway, Jodhpur is not responsible for termination of the services of Sh. Bala Ram. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2017

का.आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 57/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/11/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th February, 2017

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 14.02.2017.

[No. L-41012/11/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 57/2012

Reference No. L-41012/11/2012-IR(B-I) dated: 22.03.2012

Shri Om Prakash Sharma
S/o Shri Bhagawat Dutt Sharma
R/o In Nagori Gate, Jodhpur (Rajasthan)

V/s

1. Sr. Divisional Commercial Manager
North West Railway
Jodhpur.
2. Ms. Gulabrai and Company
Railway cattering contractor
Office Flat No.11, Akashdeep
Apartment, Teesri D road,
Sardarpura, Jodhpur.

Present :

For the Applicant : Sh. Kunal Rawat, Adv.
For the Non-applicant Railway : Sh. L.P. Singhal, Adv.
For non-applicant Ms.Gulabrai & Company : Ex-parte/Sh. K.K.Paliwal, Manager

AWARD**27.5.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North western Railway, Jodhpur and their contractor M/s. Gulabrai and company in terminating the services of Shri Om Prakash Sharma S/o Shri Bhagawat Dutt Sharma w.e.f. 08.01.2011, is legal and justified? To what relief the workman is entitled?”

2. Briefly fact of the case is that applicant workman was employed under respondent No.2 M/s. Gulab Rai & Co. on 22.1.1996 & started working since then. The main business of employer contractor was ‘ Train Side vending ’ & running the railway refreshment room at Jodhpur Railway Station. The work of the applicant was to maintain cleanliness & serve meal at refreshment room to the passengers of the train. He was engaged with train side vending also. According to contention of applicant at the time of filing of statement of claim respondent No.2 was on contract

with North Western Railway, hence, provision of Industrial Dispute Act are applicable to the respondent. Further it has been alleged that applicant worked from 22.1.1996 to 7.1.2011 with the respondents & he was terminated from the service of the respondent on 8.1.2011. His complaint against the termination before the Assistant Labour Commissioner and Conciliation Officer (Central), Ajmer failed to secure his reinstatement which resulted into above reference for adjudication.

3. Further it has been alleged by applicant workman in para 6(a) that there was complete control & supervision of respondent employer over the work of the workman & the applicant was working according to orders & directions of the respondent officers. He was working for eight hours daily & paid on monthly basis. The nature of his work was of continuing nature & facility of ESI & PF was available to him from the respondent. Applicant has worked for more than 240 days with respondent prior to his removal from service. Applicant has further said that his removal from service by respondent is in violation of section 25-F, 25-G, 25-H of Industrial Disputes Act, 1947 & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957.

4. In para 6 of statement of claim applicant has alleged that neither any notice or pay in lieu of notice was given to him nor any seniority list was prepared. The nature of work performed by him was of permanent character & respondent still needs the workmen to perform the work which was carried out by the applicant. Applicant has been victim of unfair labour practice & to escape from the regularisation of the services of applicant respondent has terminated him from service without conducting any domestic enquiry. Services of the applicant has been terminated in violation of Article 39-D & 21 of Indian Constitution. Applicant has prayed to declare the order of termination dated 8.1.2011 as void & illegal & order the reinstatement of the applicant with back wages & continuity in service.

5. In para wise reply to statement of claim by Respondent No.1, Divisional Commercial Manager, NWR, Jodhpur, statements in para 1,3,4, of statement of claim have been denied. Against para 2 it has been alleged that it requires no answer & against para 5 it has been alleged that there is no dispute about the term of reference referred by Central Government for adjudication. Further it has been alleged that respondent No.2 M/s. Gulab Rai & Co. was licensee of the railway administration on contract. Respondent No.2 was permitted to do only 'Train side Vending' till 15.10.2011 under the order of NWR Headquarter, Jaipur, hence except above contention respondent No.2 is answerable to remaining allegations of para 1 of the statement of claim. Respondent No.1 has specifically denied that applicant workman has worked under respondent No.1 from 22.1.1996 to 7.1.2011 & has alleged that applicant has never worked under the employment of respondent No.1 & respondent No.1 never removed him from the work on 8.1.2011 because respondent No.1 neither appointed him nor engaged him for any work.

6. Against reply to para 6 of statement of claim it has been alleged that question of compliance of section 25-F of I.D.Act by respondent No.1 does not arise. In reply to para 6 (A) to 6(O) of the statement of claim it has been alleged that they are not concerned with respondent No.1 & concerned with respondent No.2 only. Against para 6(P) of statement of claim it has been alleged that removal of applicant from service has been done by respondent No.2 for which respondent No.1 is not answerable. At last, it has been prayed that claim of the applicant be dismissed with heavy cost against respondent No.1.

7. Apart from above para wise reply to statement of claim two preliminary objections have been raised by respondent No.1 that respondent No.1 is not the employer of the applicant & the applicant is not the workman of the respondent No.1 & respondent No. 1 has not issued any appointment letter to the applicant. Respondent No.1 has been wrongly impleaded in the case & case is bad for misjoinder of unnecessary party & petition of the applicant is accordingly liable to be rejected. In preliminary objection No.2 it has been alleged that respondent No.1 has been impleaded as party only to invoke the jurisdiction of the tribunal & applicant has no concern with respondent No.1, hence, application is liable to be dismissed on the ground of jurisdiction.

8. In reply to statement of claim by respondent No.2 para 2 & 3 of statement of claim have been specifically denied & para 5 have been partially admitted. Against para 6 it has been alleged that para 6(A) to 6(Q) are not applicable to respondent No.2. Against para 1 it has been specifically denied that applicant is working since 22.1.1996. Further it has been alleged that existence of M/s. Gulab Rai & Co. is based on contract of the railway. The business of the company is to supply meals & eatables to the passengers in the train & refreshment room at the station at the rate fixed by railway in which no permanent employments are made because work of the respondent No.1 is not a regular business in any manner. The business of the company is based only on the contract of the railway which are given time to time & in this contract sometimes number of trains are increased or decreased in relation to which railway charges the fee on monthly, third monthly or six monthly basis. Owing to above situation respondent No.2 is not capable of regularising the business according to his choice. The work of the respondent No.2 is to run the business according to contract of the rail department. Accordingly, based on the work of contract respondent No.2 engages the workman & when there is no contract there remains no business with the respondent No.2. In above circumstances, regular workmen are not engaged & therefore, workmen are engaged sometimes on daily & sometimes on monthly basis or on commission basis, hence, provision of Industrial Disputes Act does not apply to the business of the respondent.

9. In para 2 of statement of claim applicant has claimed to have been working with due dedication & there has been no occasion to opposite party to make any complaint against his working. Specifically denying the above allegation opposite party No.2 M/s. Gulab Rai & Co. has said that on many occasion during surprise check it has been found that the applicant has been collecting more amount than the prescribed rate & Rule of the Railway & for that there have been oral complaints & applicant has been warned on those occasions. Applicant despite direction of the respondent No.2 has been habitually bringing from outside market eatables & vending them in the train for which respondent No.2 has paid penalty beside facing embarrassment. It has been further alleged that he has been habitually absenting himself without prior information.

10. Against para 3 of statement of claim it has been alleged that applicant had not been appointed permanently on 22.1.1996 or anytime thereafter & has not worked continuously till 7.1.2011. Further it has been alleged that the contract of the respondent No.2 has not been existing continuously from 22.1.1996 to 7.1.2011, hence, there was no continuous work, accordingly contention of the applicant is wrong that he had worked continuously. Further it has been alleged that applicant was never appointed on regular basis. Based on the quantum of the work of contract & number of trains work was taken on daily, monthly & on many occasion commission basis. Applicant too has been absenting from the work without prior information for long time & has been working according to his choice on different places in the city, hence, allegation of removal of the applicant from the work & termination of his services by respondent No.2 is wrong.

11. It has been further alleged that after being fully aware with the situation, with motive of lowering the prestige & image of the respondent No.2, applicant called the correspondent of D.B.Star & published misleading & false allegations against the company which is against the interest of the company. The above act of the applicant against the interest of the company shows lack of dedication of the applicant towards the company. On many occasions there were complaints by railway against the applicant during checking operation when applicant has been found engaged in earning illegal money by vending in wrong manner & collecting more money from the passengers than the prescribed rates for the articles.

12. Against para 5 of statement of claim it has been alleged that notice dated 5.4.2011 was sent to the applicant by respondent No.2 which was received by applicant but neither he appeared nor answered the notice. Despite that applicant complained before the Assistant Labour Commissioner (Central) & Conciliation Officer, Ajmer & during conciliation proceedings applicant clearly denied to work according to rules of the company & Railway & requested to send failure report to Central Government. Against para 6 of statement of claim it has been alleged that according to reply of the respondent No.2 about para 1 to 5 of the claim termination of the applicant is not illegal. About para 6(A) to 6(Q) respondent No.2 has alleged that they do not apply to the respondent & has prayed to dismiss the claim of the applicant.

13. In rejoinder, applicant has denied the statements of reply submitted by respondent No.1. In rejoinder against the reply to respondent No.2 also applicant has denied the contention of respondent No.2 .

14. In support of statement of claim as documentary evidence applicant has filed document w-1 to w-17 along with index which are photocopy of medical examination certificates relating to different period, ESI card for self & family & information obtained under Right to Information Act in relation to EPF. Beside these documents applicant has filed his affidavit in evidence & has been cross examined by respondent No.1 DCM, NWR, Jodhpur.

15. Respondent No.1 at the time of argument has filed eight pages of documentary evidence in form of photocopy relating to handing over the possession of the Refreshment Room at Jodhpur Railway Station & photocopy of judgement dated 15.12.2014 in D.B.Civil Special Appeal (W) No. 1683/2014, 1694/2014 & 1701/2014 of Hon'ble Rajasthan High Court, Jodhpur. No oral evidence has been adduced by respondent No.1.

16. As documentary evidence, respondent No.2 has filed documents totalling 23 pages on 30.1.2014. The case has proceeded ex-parte against the respondent No.2 w.e.f. 1.10.2014. Application of respondent No.2 for cancelling the order dated 1.10.2014 for proceeding ex-parte has been rejected on 7.1.2015. Since, then case has proceeded ex-parte against respondent No.2. No oral evidence has been adduced by respondent No.2 because of case proceeding ex-parte against him. Respondent No.2 thereafter has participated only at the final hearing of the argument on 12.1.2016 & 4.2.2016.

17. Following ruling has been filed from applicant side :-

i. 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents.

18. Following reportable judgement dated 25.8.2014 of full bench of Hon'ble Supreme Court of India has been filed by respondent No.1 :-

i. Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

19. Heard the argument of learned representative of the applicant & learned representatives of both the opposite parties & perused the record carefully.
20. It has been argued by learned representative of the applicant that services of the applicant has been terminated on 8.1.2011 by respondent No.2, M/s. Gulab Rai & Co. against the provision of section 25-F, 25-G & 25-H of Industrial Disputes Act & Rule 77 & 78 of The Industrial Disputes (Central) Rules, 1957. Respondent No.2 has not given any notice before termination of the services of the applicant. Applicant has worked continuously for more than 240 days immediately preceding the date of termination, hence, termination of the service is without complying the provision of section 25-F of Industrial Disputes Act. It has been further argued that railway is responsible as principal employer because nature of the work of 'Train Side Vending' carried out by the workman is of permanent nature hence, there was no reason to terminate the services of the applicant. Reliance has been placed on case reported in 2001 (2) page 128 Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against this it has been argued by learned representative of respondent No.1 that there is no proof on record that applicant had worked for 240 days immediately preceding the date of termination. It has been further argued that applicant is the employee of M/s. Gulab Rai & Co. & there is no legal reason to shift the liability regarding termination of services of applicant on Railway because services of the applicant has not been terminated by any of the railway authority. Reliance has been placed by learned representative of respondent No.1 on judgement dated 25.8.2014 by Hon'ble Supreme Court (F.B.) in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s) with further submission that case cited by learned representative for applicant does not apply in the circumstances of the present case.
21. It has been argued on behalf of M/s. Gulab Rai & Co. that when services of the applicant was terminated there was no work with the company & contract with the railway had ceased & work was going on only on extension granted by the railway, hence, there remained no scope to continue the employment of the applicant. Further it has been said that owing to end of the contract respondent No.2 has vacated the premises of the railway at Jodhpur & he is not running any vending business relating to railway hence, respondent is not in position to provide any further engagement to the applicant. During course of argument attempt was made by learned representative of respondent No.2 to submit to the court document relating to vacation of premises which was unsuccessful due to resistance of learned representative of applicant on the ground that due to ex-parte proceeding respondent No.2 can not file the papers. Against this, it has been argued by learned representative of the applicant that notice of the argument should not be taken by the tribunal because no evidence has been adduced by respondent No.2.
22. Before I proceed to discuss the issues arising out of arguments of the learned representatives of the parties it is important to mention here that case against respondent No.2 is proceeding ex-parte since 1.10.2014 & no oral evidence has been adduced in support of reply to statement of claim. No oral evidence has been adduced by respondent No.1 also. Applicant has been cross examined only by railway & no cross examination has been done by M/s. Gulab Rai & Co.
23. As far as the question of the applicant being in the employment of respondent No.2 is concerned in reply to statement of claim respondent has denied that applicant is working with him since his date of appointment on 22.1.1996. According to statement of claim applicant is in the employemnt of respondent No.2 since 22.1.1996 & has worked continuously till 7.1.2011 & his services were terminated on 8.1.2011. During cross examination by respondent No.1 applicant has stated that he was employed by M/s. Gulab Rai & Co. but he was not given any appointment letter in writing. He has further alleged that he was paid by company on monthly basis & before making the monthly payment company was securing the signature of the applicant on receipt as proof of payment. He has further alleged that he has worked from 22.1.1996 to 7.1.2011 & before his removal from the service notice was not given to the applicant. Applicant has not been cross examined by respondent No.2. A close scrutiny of the reply to statement of claim by respondent No.2 indicates that although respondent No.2 has denied the working of the applicant since 22.1.1996 but he has admitted in para 2 of reply to statement of claim that applicant is habitual in absenting himself without prior information & he has been habitually vending the eatables brought from outside market in the train for which respondent No.2 has paid penalty on many occasions beside facing embarrassment. He has further alleged in para 5 of reply that he had sent a notice to the applicant on 5.4.2011 which was not replied by him. Nature & description of the notice has not been mentioned by the respondent. He has also alleged in para 4 of reply that applicant lacks dedication & works against the interest of the company. Documents alongwith affidavit in evidence filed by applicant include photocopy of medical examination certificates relating to different period, ESI card for self & family & information obtained under Right to Information Act in relation to EPF. Ex-w-1 indicates that applicant was medically examined on 22.1.1996 for entering into the service of respondent No.2 on 22.1.1996. Ex--w-14 is medical fitness certificate which has been issued on 7.1.2002 with validity till 31.12.2010 & w-15 medical fitness certificate issued on 5.1.2011 with validity till 31.12.2011. All these documents & above noted contentions of the respondent No.2 in his reply to statement of claim are sufficient evidence to indicate that the applicant has been in the employment of respondent No.2 before termination of his services.

24. Period of 240 days from the date of termination on 8.1.2011 shall be the period during 12 calendar month immediately preceding the date of termination which means that applicant must be continuously in the service of the respondent No. 2 for 12 calendar month immediately prior to 8.1.2011 & in that period must have worked for 240 days. On the point of issue whether applicant has completed 240 days during 12 calendar month immediately preceding the date of termination it is pertinent to note that respondent No.2 has been directed by order of the tribunal dated 4.12.13 & 19.3.14 to file documents in tribunal as per request of the applicant on application dated 11.4.12 wherein attendance register, pay register & other documents have been requested to be summoned. Respondent No.2 has filed certain documents on 30.1.14 but these documents are serving the own purposes of respondent No.2 & attendance register & pay register have not been filed. Tribunal has not been informed on affidavit or otherwise about availability or non-availability of documents relating to attendance & pay. The above situation & circumstance including ignorance of respondent No.2 in filing the documents relating to pay & attendance & not informing about their non-availability accompanied with uncrossed examined testimony of applicant by respondent No.2 is sufficient to draw an inference in favour of applicant & against the respondent No.2 that applicant has worked for 240 days immediately preceding the date of his termination on 8.1.11. There are certain other documents available on record which can show that applicant was in engagement with respondent immediately prior to the date of termination for a period of 240 days which include letter dated 9.7.2010 written by M/s. Gulab Rai & Co. to the Chief Regional Manager, IRCTC, Jaipur for renewal of passes of the applicants for 'Train Side Vending'. This indicates that applicant was in possession of pass which was valid till 15.7.2010. Beside letter dated 9.7.2010 another letter dated 10.1.2011 has been written by the M/s. Gulab Rai & Co. to DRM, NWR, Jodhpur for issue of passes of the applicants working with the company wherein it has been alleged that they are doing train side vending for past 10 years. Validity of these passes are generally for a period of one year. Ex-w-14 medical fitness certificate issued on 7.1.2010 is valid till 31.12.2010. Document w-14 indicates that applicant was in employment of respondent No.2 in the month of January, 2010. Ex-w-15 is also medical fitness certificate issued on 5.1.2011 which is valid till 31.12.2011. This document ex—w-15 indicates that applicant was in the employment of respondent No.2 till the date of his termination on 8.1.2011. Based on above discussion, available documents & evidence on record I am of the view that applicant has served with respondent No. 2 for a period of 240 days immediately preceding the date of his termination. Inference u/s 114 (1)(G) of Evidence Act is another aspect existing in favour of applicant.

25. As far as the violation of section 25-G & 25-H & rule 77 & 78 is concerned applicant has not provided any information in statement of claim that who was the last comer in the service who was to go first in case of retrenchment. He has not given name of person junior to him retained in service. Applicant has also not given any information in claim that any person has been appointed by M/s. Gulab Rai & Co. subsequent to removal of the applicant. Thus, I am of the view that applicant has failed to adduce evidence to prove that there is violation of section 25-G & 25-H of Industrial Disputes Act. Respondent No.2 has alleged in reply to statement of claim that provision of rule 77 & 78 do not apply to the respondent No.2. Respondent No.1 has alleged in reply that it is not related with respondent No.1 & needs no reply. Rule 78 deals with re-employment of retrenched workman. There is no evidence that respondent No.2 has made any appointment after retrenchment of the applicant, hence, there is no violation of rule 78. In absence of evidence for violation of section 26-G the question of violation of rule 77 has no bearing on the right of the applicant.

26. From above discussions it is clear that termination of the services of the applicant is against the provision of section 25-F of Industrial Disputes Act. Admittedly, dismissal of the services of the applicant has been done by respondent No. 2. It has been argued by learned representative of the applicant that railway should be held responsible for termination of the services of the applicant as the work of the applicant in refreshment room or 'Train Side Vending' are works of permanent nature which are always available with railway & applicant should be treated as employee of railway as principal employer. Learned representative of the applicant has relied on the case reported in 2001 (2) page 128, Western Law Cases (Raj.), Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents. Against above argument it has been argued by learned representative of the railway that applicant has himself admitted that he was employed by M/s. Gulab Rai & Co. & his services were terminated by the company. In above fact & circumstance, contention of the learned representative of the applicant is not sustainable that applicant should be treated as employee of railway as principal employer. He has further submitted that case law cited by applicant side is not applicable in the present case. He has further argued that there is no evidence of supervision & control of railway on the applicant & his working & he is not on the pay roll of the railway, hence, railway is not responsible for the termination of the services of the applicant & he has not been terminated by any officer of the railway. Reliance has been placed on para 86 of judgement of Hon'ble Supreme Court dated 25.8.2014 in Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s).

27. The main question to be answered in light of arguments advanced by learned representative of both the parties is whether Railway is responsible for the termination of the services of the applicant which has been admittedly done by M/s. Gulab Rai & Co.

28. In 2001 (2) page 128, Rajasthan High Court (Jodhpur) D.B., M/s. Rajasthan Co-Operative Dairy Federation Ltd.....Appellant v/s The Judge Industrial Tribunal & Labour Court, Bikaner.....Respondents, respondent Sh. Karni Singh raised dispute about termination of his services on the ground of violation of section 25-F & G of Industrial Disputes Act, 1947. The contention of the appellant was that Sh. Karni Singh was employed by the contractor to look after the security of the property of the appellant & he was not employed by the Federation, hence, appellant is not liable for consequences arising out of termination of services of Sh. Karni Singh even if, the termination is illegal which has taken place by his immediate employer contractor. This plea was rejected by labour court on the basis of defence raised by workman under amended provision of Rajasthan State u/s 2(s) of I.D. Act, 1947. Sh. Karni Singh had died during pendency of reference proceeding. The tribunal awarded a lump sum compensation to the next of the kin of the deceased Sh. Karni Singh. Aggrieved by the award of tribunal appellant preferred writ petition before the Hon'ble High Court under Article 226 & 227 of Indian Constitution which was dismissed by Hon'ble Single Judge on the basis that there was no failure of substantial justice & he did not inquire into the correctness of the contention raised by the learned counsel for the appellant that deceased was not the employee of the appellant & he was working through contractor. Appellant filed appeal against the order of dismissal of Hon'ble Single Judge. Dismissing the appeal it was held by Hon'ble Division Bench in para 10 & 11 of the judgement as under :-

“10. Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 & 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

11. So far as the Rajasthan is concerned the definition of ‘workman’ as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No.34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by an employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Karni Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by the Contractor for the employer in which category even on the contention of the management, case of Karni Singh would fall.”

29. In Civil Appeal Nos. 10264 – 10266 of 2013, Balwant Rai Saluja & Anr.....Appellant (s) v/s Air India Ltd. & Ors.....Respondent(s), in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for award was whether workman as employed by respondent No.3 (Chefair Flight Catering) to provide canteen services at the establishment of respondent No.1 (Air India Ltd.) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 Air India & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the Air India & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench of High Court there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engaged thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by Air India Ltd, respondent No.1 & the Hotel Corporation of India Ltd respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's

regular employees, and there by claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs.”

30. In the present case, admittedly applicant has been appointed by respondent No.2 & has been an employee fully within the control & supervision of the respondent No.2. He was in receipt of pay & emoluments from respondent No.2 & respondent No.1 has no control of any nature disciplinary or otherwise over the applicant, hence, respondent No.1 cannot be held responsible for liability of respondent No.2 having exclusive control over the applicant. Out of rulings referred from both the side, the law laid down by Hon'ble Supreme Court is attracted in fact & circumstances of the present case. Accordingly, I am of the view that respondent No.2 is responsible for the liabilities arising out of illegal termination of the services of the applicant & railway has neither terminated the services of the applicant nor is responsible for such termination.

31. About the nature of relief to be given to the applicant it has been argued by learned representative of the applicant that applicant should be reinstated with full back wages & continuity in service. Against this it has been argued by learned representative of Railway that Railway is not responsible in any manner to provide engagement to the applicant in railway. It has been argued by learned representative of M/s. Gulab Rai & Co. that company is no more on business of the railway on contract & the premises of the railway has also been vacated & handed over to the railway, hence, applicant can't be reinstated in service. From perusal of the file it is evident that Hon'ble Division Bench of High Court (Jodhpur) has vide order dated 15.12.2014 has ordered M/s. Gulab Rai & Co. to vacate the premises by 23.12.2014 & hand over the possession & canteen to railway which has been complied by the company. There is no evidence on record to show that M/s. Gulab Rai & Co. is having any other premises elsewhere where business of present nature or any other nature is carried out. As per finding given above it is clear that action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of applicant is unjustified & illegal & in violation of provisions of 25-F of Industrial Disputes Act. The legal position is undisputed that in case of non-compliance of section 25-F applicant workman may be reinstated with other consequential benefits but in fact & circumstances of the present case where reinstatement is impracticable it appears just & proper to award suitable compensation to the applicant to meet the end of justice.

32. The year of birth of applicant is 1974 in W-16 ESI card which means that applicant is of the age of above 37 years at the time of termination from service & he has been inducted in the service on 22.1.1996 as per statement of claim. Thus, he has completed about 14 years & 11 months of service. Applicant has not mentioned in statement of claim that what was his salary at the time of entry into the service & at the time of his termination from the service. In above fact & circumstance, I am of the view that an award of a lump sum compensation amount of Rs.20000/- to the applicant to be paid by respondent No.2 will be sufficient to meet the end of justice.

33. In the result, the reference is answered in affirmative in favour of applicant workman & it is held that the action of the management of M/s. Gulab Rai & Co., Jodhpur in terminating the services of Sh. Om Prakash Sharma S/o Sh. Bhagawat Dutt Sharma w.e.f. 8.1.2011 is illegal & unjustified. Therefore, M/s. Gulab Rai & Co. is directed to pay as compensation to the applicant Sh. Om Prakash Sharma a sum of Rs.20000/- (Twenty Thousand Only) instead & in lieu of his reinstatement in service. The payment shall be made within two months from the date of publication of award failing which the applicant shall be entitled to the amount of compensation with 8% simple interest per annum. Management of North Western Railway, Jodhpur is not responsible for termination of the services of Sh. Om Prakash Sharma. Application of the applicant is accordingly allowed.

34. Award as above.

BHARAT PANDEY, Presiding Officer